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Slavery,

ITS

UNCONSTITUTIONALITY.

AN

ARGUMENT

ON THE

UNCONSTITUTIONALITY OF SLAVERY,

EMBRACING AN

ABSTRACT OF THE PROCEEDINGS

OF THE

NATIONAL AND STATE CONVENTIONS

ON THIS SUBJECT.

By G. W. F. MELLEN.

Shall I hold another in slavery, when I myself would be free?

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PREFACE.

In presenting the public with the present volume, we are aware it involves some presumption, as we are not connected with the learned profession of the law; but none, either abler or otherwise, having undertaken the task, we have ventured to raise our sail, and, with what skill and favorable winds we could command, have endeavored to steer our bark into the desired haven. We are aware that Mr. Alvan Stewart, of New York, with his great mind, has preceded us in the discussion of the constitutional question of the rights of slaveholders; but he did not touch the point which we thought lay at the foundation of this most interesting question; we have therefore considered it in a somewhat different aspect. While he supposed, because the States had not by their laws established slavery, therefore it did not exist, we, on the contrary, would affirm, that, according to our Constitution, it is impossible either for congress

or the States to establish it; that no man now is rightfully or legally held in bondage in this country; that the whole system is unconstitutional; and that it is in violation of its spirit and letter, and ought not to be upheld.

But, knowing such weighty authorities are at present opposed to us, we have had to be rather labored, and to extend our remarks and proofs to a greater length than might be desirable; but, as we have endeavored to give a connected history of the proceedings of various public bodies in relation to the question at issue, and have done it with all the impartiality of which we are capable, we hope our exertions will not prove unavailing to throw light upon a subject which now seems to be involved in much darkness and uncertainty, if we can judge from the contrariety of opinions we have heard both publicly and privately expressed. We are aware, also, we take a different stand from many distinguished abolitionists on this question, and that a good deal of sensitiveness has been manifested towards us on account of it; but, as the facts and arguments adduced in this work have fully satisfied ourself on this subject, it is hoped they may not fail to convince others, and that it will be finally admitted that not only the States, but the United States, and the various

courts of the land, all have authority over the subject, when the question arises in their several jurisdictions. We have considered the distinctive character of our government arises from the fact a man cannot be subjected to arbitrary authority in this country; and from this alone it deserves the appellation "free." We take it for granted, it cannot be supposed that individuals under a government have a greater authority over other individuals under the same government than the government itself.

But, while we have, as we think, most clearly demonstrated these as truths, and that every individual person is by the Constitution allowed his inalienable rights, and the free exercise of them, we should also hold, even if the Southern States were foreign nations, and we had no connection or interest with them, it would be our duty, and the duty of every other man, to lift up his voice against the oppression that is there exercised, on the same grounds that we should enter a stranger's house from which proceeded the cry of help and murder. Is there one of us, in the Northern States, who should see one man beating another in the street, would not endeavor to know the cause of the assault, and, if in our power, prevent its continuance; or, if we should see one

flying from an infuriated man, should we not endeavor to render succor and assistance to him who is fleeing? And when we see and know that thousands and tens of thousands of our colored brethren have already fled, and are continually fleeing, for succor and for aid to shield them from the iron yoke imposed upon them in the Southern States of this Union, and when we know their cry is constantly ascending for assistance, can we, ought we, to fold our arms in indifference? Let him who has never wanted, and never expects to want, the sympathies and aid of his fellow-men answer in the affirmative, and act accordingly. Knowing, however, our own weakness and our own wants, we must act in a different manner.

But we affirm, according to our present arrangement, the Southern States can in no light be considered as foreign nations to us: our destiny is bound up with theirs, and we cannot hope to escape unless we dissolve our present connection. Are we liable every moment to be called upon to shoulder our muskets, to defend the South from any danger that may arise either from external foes, or internal insurrections, without having any interest to prevent, if possible, our being thus called upon? Has a foreign nation the same right to call upon us for such a purpose? We cannot

suppose any one will answer in the affirmative; neither could we have believed, had it not been done by so many individuals, that a single person could have been found, that would have admitted it possible any one could, in this country, be driven about hither and thither, whether as soldiers or as slaves, without being able to ask the reason why, or without having the right, in any way or in any manner, of preventing such being the case. We think our fathers have not left us such a legacy; on the contrary, they not only took better care of their own rights, but took better care of the rights of their posterity; and it is the purpose of the following pages to show how and in what manner they have done it.

If we are successful in convincing this nation, or rendering any help to convince it, that there is and can be no legal slavery in this country under our present Constitution, as we ourself are convinced there can be none, we shall thank God and take courage. We therefore humbly dedicate this book to the people of the United States; and, although it has been written in hours snatched from business and relaxation, and its literary merits may be objectionable, we hope the ideas will be pondered and considered, and that we shall not rush blindfolded into slavery to our own

destruction, and to the destruction of the hopes of the great and good who have desired the liberty and happiness of mankind.

We would however observe, that in any thing we may say in the following pages, we hope no one will suppose that we would not be as careful of State rights as the most jealous person, whether in or out of the abolition ranks; but we have no sympathy with those who are so sensitive with regard to them on some points, and yet pay no sort of regard to them when certain other points are under consideration.

We will take this opportunity to thank Mr. Coffin, and Mr. Snelling, of the State Library, for their politeness in allowing us the examination of such books under their charge as we wished.

G. W. F. Mellen.

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THE

UNCONSTITUTIONALITY

OF

SLAVERY.

CHAPTER I.

A GENERAL STATEMENT OF THE QUESTION.

The idea having been advanced in some of our most prominent political and religious journals, and also in various addresses made to the public by members belonging to both political parties,[1] that no person out of the slave States had any thing to do with slavery;[2] that its abolition belongs solely to the States in which it exists; that *we* have nothing more to do with it than if these States were foreign nations, and that we violate the law of nations by meddling with it;[3] and that, if these States were not of our own household, the proceedings of the abolitionists would be a cause of war; and, further, (the doctrine is advanced by some,) that slavery was by the Constitution guaranteed to the South,[4]—it is our purpose to con-

[1] Democratic Address, delivered in Baltimore in 1838. Mr. Webster's Address, delivered in Richmond, October, 1840. Atherton's Resolutions, 1838.

[2] Boston Quarterly Review, No. II. p. 242; also No. XIII. p. 95.

[3] Boston Quarterly Review, No. II. p. 252.

[4] Christian Examiner, Third Series, No. XIII. 1837, p. 84, &c.

sider these several subjects, and see how far they can be true, and if in truth it be possible we can arrive to any such alarming conclusions. While, we say, we will make the above inquiries, we will also see whether, on the contrary, while this system was found, like other evil practices that sometimes gain a foothold on the affections of a people, our fathers did not do as much as they thought in their power to put an end to the system, and leave it not only in the power of the government to destroy it, but absolutely, and in fact, by the system they adopted, they did not place it in the power of every individual, who should be maltreated or restrained in his liberty, to get redress of his grievances through the instrumentality of the courts; so that, if proper steps had been taken, no man need to have been retained in slavery since the adoption of the Constitution; in truth, that there is no legal or rightful slavery in the United States, nor can there be, by any powers either in the State or United States government; much less is there any constitutional power in the individual, to make a slave of any person whatever; that, unless for crimes committed against the laws of society, and which laws must have an equal bearing upon all, a man cannot be restrained in his life, liberty, or pursuit of happiness; and, consequently, all the laws made by the different States to secure man in slavery are null and void, and, if carried into execution, are in direct violation of the Constitution of our country.

To say our fathers guaranteed slavery to the

South, is advancing a doctrine so opposed to their professed attachment to liberty, and to the doctrines advanced in the Declaration of Independence, and to the professed reasons which most of them gave for coming to this country, and would involve them in such a labyrinth of hypocrisy, that it seems as if no individual would be willing to make himself obnoxious to the charge, and that he would pause for a long time before he would admit such a doctrine, or would suffer it to gain publicity. To say our fathers — the persons who came over in the Mayflower, that Penn, that the Germans — all left their shores, either openly avowing, or, by their subsequent practice, showing, they came away to avoid the tyranny of their own countries, and came to this continent, to these shores, with the express purpose of here enjoying greater freedom than at home, and of establishing, in this then wilderness, the basis of freer institutions than they were living under in their own country, but, at the same time, beneath this fair exterior they were entertaining doctrines which, if carried out, (and they have been carried out,) would introduce a tyranny as much worse than any existing in the several lands from which they came as can be well conceived; or that our fathers, who took an active part in our revolutionary struggle, should have played the same game,— should, while they were advancing the "self-evident truths," "that all men were created equal," that they "had an inalienable right to life, liberty, and pursuit of happiness," and thereby

touching that cord in every noble and generous mind, and which, if properly struck, will be sure to vibrate in union with the master hand, and which did call forth the treasures and assistance of a Lafayette, and caused a Kosciusko to bleed; that these men, who advanced and maintained these principles before the world, did it only that they might gain the world's assistance and its applause, while they had determined, within themselves, to violate every principle they professed, or only that they might be better able to impose on their brother man a tyranny equal in cruelty to any the world had ever witnessed, — is advancing a doctrine so abhorrent, we can scarce believe, had it not been asserted, it could have been entertained a moment. And yet what is it but saying all this, when we allow it to be understood, without any qualification, that our fathers, the moment it was in their power to frame laws to govern the country to which they had resorted, should, in contempt of all their previous professions, place upon a permanent footing, and that with malice *prepense*, a system of which they at least made a show, on account of its barbarity and the manner it was imposed upon them one cause of war? Such a judgment seems too contrary to all of our preconceived notions of their integrity, to be for a moment admitted; and, if there was any thing in their actions that would at all give countenance to such a construction of their conduct, some excuse ought to be found, some reason, either good or apparently so, which may have appeared, to their

minds, to justify them in a course so opposite to what might have been expected.

It is not our intention, however, to advance the idea that all the men of that age were perfect. That there were men who would not have been willing to act in such a hypocritical manner; and that there were many who did use their utmost influence to fasten upon the country this system of abominations, and, on account of their supposed interest involved, were willing to do any thing, provided this should be effected; and that many, after our independence was gained, took no active interest in it, and would have been very glad had no change taken place, but, after it did take place, threw in what weight they could to prevent any alteration in their domestic concerns, — we have no doubt. And that such persons did effect much, and did, perhaps, prevent a general emancipation from slavery throughout the United States at the time, there can, perhaps, be no doubt; neither can there be any doubt that, through their solicitations, and the honest fears of others, as to the consequence of having in their midst, without more than ordinary restraint, a comparatively ignorant, barbarous, and heathen people, the subject of emancipation was kept in the back-ground, or involved so mysteriously as to be left, by those who would have taken a different course, to future generations, to correct any error they may have committed; and we find that those who took the most active part in that struggle, and by whose influence it was in the main carried

on, were thwarted and prevented from doing as they would. Having gone through one struggle, and being, as they themselves say, advanced in years, they left what of the work they had not finished to those who might come after them. But, after all, although they did not proclaim a general emancipation to the colored race, yet we think they left no word by which slavery could be justified or maintained in the Constitution of our country; and that, so far as that instrument is concerned, it cannot be supported. This, we are aware, is an assertion contrary to the expressed opinion of many distinguished men. But, when a guaranty is given, we think there ought to be something more than inuendoes to maintain it; that the subject to be guaranteed should be expressly stated; that nothing should have been left to inference; that, in a case so important, a clear understanding should have been entertained; there should have been left no doubt on the subject; and yet, in all of the public documents that were given to the American people and to the world, the subject of slavery is not mentioned but with reprobation. The nation at large were, no doubt, opposed to slavery. No one, in that age, dared to assert slavery was a blessing; no one seemed to think it was so; but every demonstration that was made in regard to it was of a contrary character. The trade has been termed, at least when conducted on a foreign shore, piracy; and their abhorrence of it has been shown, in a greater or less degree, in the various laws that have been made on

the subject. We must admit, however, they suffered, against the consent of the most active men in the revolutionary struggle, this piracy to continue twenty years after our present government was established, and, by so doing, laid the foundation of the troubles we now experience; though the very manner they worded this permission shows they did not feel over-anxious to leave on record any justification, on their part, of its being done; and that the present ideas in regard to it are but of late growth. The idea of its being a blessing, as a permanent institution, does not appear to have entered their heads. It was solely the want of laborers in the more southern States that induced them to consent to have it continued, and not because they had any sympathy for the system. It was urged that the white man could not work on the rice plains of the South; and, unless there could be a colored population there, they would have to remain a wilderness; and that the African would be better off in this country than in his own. These ideas, with the fear they should not be able to maintain their liberties and the best good of the country without a union of the States, induced them to consent to its temporary continuance. Its perpetuation, however, was not thought of, saving, perhaps, in the minds of some, the young giant was discovered while it was but a suckling.

But it is asked how it is, then, that that which was considered so great an evil, at the time of which we are speaking, should in so short a time

become to be considered of so much utility that it must not be spoken of but with approbation, and that the statesmen in both of the great political parties of our country so universally uncover their heads in its presence, and bow down to it as to a god from whom they have received their very existence.

Mr. Birney, in his letter to the Hon. Mr. Elmore, of South Carolina, in answer to certain inquiries made of him respecting the intentions and prospects of the abolitionists of the North, states the case in a clear and distinct light. He says, —

"The ascendency that slavery has acquired and exercises, in the administration of the government, and the apprehension now prevailing among the sober and intelligent, irrespective of party, that it will soon overmatch the Constitution itself, may be ranked among the events of the last two or three years that effect the cause of the abolitionist. The abolitionists regard the Constitution with unabated affection. They hold in no common veneration the memory of those who made it. They would be the last to brand Franklin, and King, and Morris, and Wilton, and Sherman, and Hamilton, with the ineffable infamy of attempting to engraft on the Constitution, and therefore to *perpetuate*, a system of oppression in absolute antagonism to its high and professed objects, one which their own practice condemned; and this, too, when they had scarcely wiped away the dust and sweat of the Revolution from their brows.

"Whilst abolitionists speak thus of our constitutional fathers, they do not justify the dereliction from principles into which they were betrayed, when they imparted to the works of their hands *any* power to contribute to the

continuance of such a system. They can only palliate it, by supposing that they thought slavery was already a waning institution, destined soon to pass away. In their time, (1787,) slaves were comparatively of little value, there being then no great slave staple (as cotton is now) to make them profitable to the slaveholder.[1]

"Had the circumstances of the country remained as they then were, slave labor, always and every where the most expensive, would have disappeared before the competition of free labor. They had seen, too, the principles of liberty embodied in most of the State Constitutions; they had seen slavery utterly forbidden in that of Vermont, instantaneously abolished in that of Massachusetts, and laws enacted in the other New England States, and in Pennsylvania, for its gradual abolition. Well might they have anticipated that justice and humanity, now starting forth with fresh vigor, would, in their march, sweep away the whole system; more especially as freedom of speech and the press, the legitimate abolisher, not only of the vice of slavery, but of every other that time should reveal in our institutions or practice, had been fully secured to the people. Again, power was conferred on congress to put a stop to the African slave-trade, without which it was thought at that time to be impossible to maintain slavery as a system on this continent, so great was the havoc on human life. Authority was also granted to congress to prevent the transfer of slaves, as articles of commerce, from one State to another, and the introduction of slavery into the Territories.[2] All this was crowned by the power to prevent the admis-

[1] The cultivation of cotton was almost unknown in the United States before 1787. It was not till two years afterwards that it began to be raised and exported. (See report of the secretary of the treasury, July 29, 1836.)

[2] The following is the opinion of the late Chief Justice Jay as to this part of the *constitutional* question. It is contained in a letter

sion into the Union of any new State, whose form of government was repugnant to the principles of liberty set forth in the Constitution of the United States. The faithful execution by congress of these powers, it was reasonably enough supposed, would, at least, prevent the growth of slavery, if it did not entirely remove it. Congress did, at the same time, execute one of them, — deemed then the most effectual of the whole, but, as it turned out, the least so."

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from him to the venerable Elias Little, and can be added to what has been said and written on the subject of slavery:

"Nov. 17, 1819. I concur in the opinion it ought not to be *introduced, nor permitted* in any of the new States; and that it ought to be gradually diminished and abolished in them all.

"To use the constitutional authority of congress to prohibit the *migration* and *importation* of slaves into any of the States does not appear questionable.

"The first article of the Constitution specifies the legislative powers committed to congress. The ninth section of this article has these words: 'The migration or importation of such persons as any of the now existing States shall think proper to admit, shall not be prohibited by the congress prior to the year 1808; but a tax, or duty, may be imposed on such importation not exceeding ten dollars for each person.'

"I understand the sense and meaning of this clause to be, that the power of the congress, although competent to *prohibit such migration and importation*, was not to be exercised with respect to the THEN existing States, and them only till the year 1808, but that congress were at liberty to make such prohibitions as to any *new State* which might in the *mean time* be established. And, further, that, from and after that period, they were authorized to make such prohibition as to all the States, whether new or old.

"Slaves were the persons intended. The name slaves was avoided, on account of the existing toleration of slavery, and its existing discordancy with the principles of the Revolution, and from the consciousness of its being repugnant to those propositions in the Declaration of Independence: 'We hold these truths to be self-evident, — that all men are created equal; that they are endowed by their Creator with certain inalienable rights; and that among these are life, liberty, and the pursuit of happiness.'

He then goes on to state that the interdiction of the African slave trade did not diminish the trade itself, or mitigate its horrors. It simply transferred from Africa to America "its profits from African princes to American farmers." He doubted if slavery would have extended over so large a space as it now does, if the trade had not been interdicted; for the cheap rate at which slaves could have been imported would have prevented the rearing them on American soil; and, if the internal commerce could be restricted, slavery would soon die of itself. They could not maintain it on account of the competition of free labor. And the not using by congress of the power it possessed, or rather to the unfaithful application of their power to other points, on which it was expected to act for the limitation and extirpation of slavery, that the hopes of our fathers have not been realized. Slavery has advanced to its present audacious position by steps at first gradual, and for a long time almost unnoticed; afterwards by intimidation and corruption, up to the time of the "Missouri compromise," by which the nation was defrauded of its honor; and that, up to this time, slavery was looked upon as an evil that was to yield to the expanding and enlightened influences of our Constitution, principles, and regulations.

He then proceeds:

"It has already been said we have been brought into our present condition by the unfaithfulness of congress, in not exerting the power vested in it, to stop the domestic slave-trade, and in the abuse of the power of

admitting new States into the Union. Kentucky made application, in 1792, with a slaveholding Constitution in her hand. With what a mere *technicality* congress suffered itself to be dragged into torpor! *She was part of one of the original States*, and therefore entitled to all their privileges."

It should have been entitled to all the curses that the system of slavery necessarily imposes upon a community that upholds it.

"One precedent established, it was easy to make another. Tennessee was admitted in 1796, without scruple, on the same ground.

"The next triumph of slavery was in 1803, in the purchase of Louisiana, acknowledged afterwards, even by Jefferson who made it, to be unauthorized by the Constitution, and in the establishment of slavery throughout its vast limits, actually and substantially under the auspices of that instrument which declares its only object to be 'to form a more perfect union, establish JUSTICE, insure DOMESTIC TRANQUILLITY, provide for the common defence, promote the general welfare, and secure the blessings of LIBERTY to ourselves and our posterity.'

"In this case the violation of the Constitution was suffered to pass with but little opposition, except from Massachusetts, because we were content to receive in exchange multiplied commercial benefits and enlarged territorial limits.

"The next stride that slavery made over the Constitution was the admission of the State of Louisiana into the Union. *She* could claim no favor as part of an 'original State.' At this point, it might have been supposed the friends of freedom, and of the Constitution according to its original intent, would have made a stand.

But no; with the exception of Massachusetts, they hesitated, and were persuaded to acquiesce, because the country was just about entering into a war with England, and the crisis was unpropitious for discussing questions that would create divisions between different sections of the Union. 'We must wait till the country is at peace.' Thus it was that Louisiana was admitted without a controversy.

"Next followed, in 1817 and 1820, Mississippi and Alabama, admitted, after the example of Kentucky and Tennessee, without any contest.

"Meantime, Florida had given some uneasiness to the slaveholders of the neighboring States; and, for their accommodation chiefly, a negotiation was set on foot by the government to purchase it.

"Missouri was next in order, in 1821. She could plead no privilege, on the score of being part of one of the original States; the country, too, was relieved from the pressure of her late conflict with England; it was prosperous and quiet; every thing seemed propitious to a calm and dispassionate consideration to the claim of slaveholders to add props to their system by admitting indefinitely new States to the Union. Up to this time the EVIL of slavery had been almost universally acknowledged and deplored by the South, and its termination (apparently) sincerely hoped for. By this management, its friends succeeded in blinding the confiding people of the North. They thought, for the most part, the slaveholders were acting in good faith. It is not intended by this expression that the South had all along pressed the admission of new States simply with the view to increase its own relative power. By no means: slavery had insinuated itself into favor because of its being mixed up with (other) supposed benefits, and because its ultimate influence on the government was neither suspected nor

dreaded. But on the Missouri question there was a fair trial of strength between the friends of slavery and the friends of the Constitution. The former triumphed, and by the prime agency of one[1] whose raiment, the remainder of his days, ought to be sackcloth and ashes, because of the disgrace he has continued on the name of his country, and the consequent injury he has inflicted on the cause of freedom throughout the world. Although all the different administrations had, in the indirect manner already stated, favored slavery, there had not been, on any previous occasion, a direct struggle between its pretensions and the principles of liberty engrafted on the Constitution. The friends of the latter were induced to believe, whenever they should be arrayed against each other, that theirs would be the triumph. Tremendous error! Mistake almost fatal! The battle was fought. Slavery emerged from it unhurt, her hands made gory, her bloody plume still floating in the air, exultingly brandishing her sword over her prostrate and vanquished enemy. She had now all for which she had fought. Her victory was complete, — THE SANCTION OF THE NATION WAS GIVEN TO SLAVERY!

"Immediately after this achievement the slaveholding interest was still more strongly fortified by the acquisition and the establishment of slavery there, as it had already been in the Territory of Louisiana.

"The Missouri triumph, however, seems to have extinguished every thing like systematic or spirited opposition, on the part of the free States, to the pretensions of the slaveholding South.

"Arkansas was admitted but the other day, with nothing that deserves to be called an effort to prevent it, although her Constitution attempts to *perpetuate* slavery

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[1] Henry Clay.

by forbidding the master to emancipate his bondman without the consent of the legislature, and the legislature without the consent of the master. Emboldened, but not satisfied, with their success in every political contest with the people of the free States, the slaveholders are beginning to throw off their disguise; to brand their former notions about the '*evil*, political and moral,' of slavery as 'folly and delusion;'[1] and, as if to 'make assurance doubly sure,' and to defend themselves forever, by territorial power, against the progress of free principles and the renovation of the Constitution, they now demand openly — scorning to conceal that their object is *to advance and establish their political power in the country* — that Texas, a foreign state, five or six times as large as all New England, with a Constitution dyed as deep in slavery as that of Arkansas, shall be added to the Union."

Thus we have given Mr. Birney's views of the manner slavery has advanced in the country, because we think they are plain, explicit, and to the point, and show how slavery has advanced by successive steps from being considered the worst of evils to that of the greatest good; and, by showing this, we shall be able more clearly to perceive why our fathers did not in any manner guarantee, or even countenance, slavery, by any of their public acts; but, on the contrary, as we shall attempt to prove, so far as they did go, their acts went to break up the whole system, or provide for its being so broken up; and, in fact, if advantage had been taken of their words by our colored popula-

[1] John C. Calhoun, in the senate of the United States, made use of this expression.

tion, slavery would have ceased to have existed at the time of the declaration of our independence; and we think it can now be sufficiently shown the system has never been by law established, but that ways have been provided for its final extirpation. Such being the case, nothing but the supineness of those, both white and colored, who were and are interested, has perpetuated it in our land.

In order to substantiate these assertions, it may be thought proper and necessary, since so much has been said and admitted to the contrary, to show on what they are founded, and how such a position can be maintained; and, in order so to do, it may be necessary to go back in our history, to ascertain what were the principles not only of the men who framed the instruments to which reference has been made, but also of their predecessors. Having the biography of so many of the men who first came to this country, belonging to our own race, as well as the history of the time of their first landing to the time spoken of, we can perhaps come to a just conclusion.

It would hardly be necessary to assert all of our fathers had a clear conception of the value of, or even desired, universal liberty, — that they were all pure, honest, and true men; consequently we will not, however much we might wish, and we shall not, attempt to maintain such a proposition; or that men did not come to this country with the avowed purpose and express desire, not only of making money in the ordinary modes of traffic, but that many came for the very purpose of trafficking in

slaves, and of accumulating property through their agency; and that this object and design was kept in view, either among themselves or their descendants, from the time of the first introduction of slavery till the adoption of the Constitution; and that their influence was felt through these successive periods, and manifested itself in the acts of the men who promulgated the Declaration of Independence, who formed the confederation, and, finally, of those who adopted the Constitution. We have seen how that influence has been extended from that time to this, and that by false arguments and false reasonings they have produced the results we now witness.

But that the great body of the people who came to this country, either before the declaration of independence or since, or of those who took a part in the proceedings of the revolution, were men who favored slavery, we think cannot for a moment be admitted. Perhaps it may not be necessary to quote from the principal men of that day, or to go into a long and labored argument to show that they were on the side of freedom, because it would seem like arguing a point that every one admitted, and that it was too plain and palpable on the face of our history to be denied; and perhaps it may be said it is not denied; but yet, when respectable journals, and men in high authority, say our revolutionary fathers guaranteed slavery to the South, or left it in such a manner, that, while each and all of the different States were bound to suppress, or help suppress, an insurrec-

tion that might occur among the slaves, they put it out of their power to say or do any thing against its continuance, or left no way by which it could be brought to an end by the courts, we cannot conceive it in any other light than the admission that, while the men of that day made the strongest professions in favor of liberty, they were, at the same time, preparing the country for the vilest system of bondage; in other words, making them the greatest of hypocrites, — a character we do not think they deserve.

It is certainly evident our Pilgrim fathers, with the advice of Robinson, came here to enjoy their civil and religious privileges, and that they did introduce into their government these great principles. Although, in the course of time, many of these principles may have been disregarded, as in the persecution of Roger Williams and the Quakers, and in some of their number holding slaves, yet, after proper discussion, and seeing the bearing to which their actions tended, they gave up the contest; and the apparent result of every trial of this kind fixed deeper, broader, and stronger, in the minds of our fathers the love of liberty; so that no persecution of the same kind has ever taken place a second time. However much individuals might have wished a different order of things, or however much they may have been mistaken in any of their works, no sooner was the result of their actions understood by the general mass, that the great doctrine of general or individual liberty was endangered, than they

at once rallied with all their powers of opposition, and caused the obnoxious measures to cease. The refusing of civil privileges, excepting to church members, was one of these laws; but, as soon as it was found to interfere with individual liberty, it was done away. Penn, with his followers, certainly entertained the same notions, and came here for a similar purpose.

The German population, also, that settled in New York and Pennsylvania, entertained, in a greater or less degree, the same idea: this we think is evident in the attachment which the German population in the State of Pennsylvania still manifest towards what is called the republican party in the United States. Wherever and whenever they become convinced that one party, rather than the other, embodies the republican principle, there they are sure to side; and, in fact, it is appealing to this principle alone, and convincing them that the persons who would obtain office will maintain their sentiments, that any have the most distant hope of success.[1]

Mr. Haynes, in a speech made in the senate of the United States, January 21, 1836, said:

"The people whom I represent are the descendants of those who brought with them to this country, as the most precious of their possessions, an ardent love of liberty; and, while that shall be preserved, they will

[1] The result of the past election, we cannot but think, was in part caused by appealing to this very principle.

always be found manfully struggling against the consolidation of this government as the worst of evils."

The State of North Carolina was settled for the most part by Quakers, and the people of that State have been, from the beginning, less attached to slavery, if we can judge from the proceedings of their public bodies, than most of the Southern States. At the time of the formation of the Constitution their delegates received no instructions on the subject of slavery, while those from South Carolina and Georgia did. The delegates from this State were left to act according to their own judgment on the subject, and it may be it was through the influence of the Quakers they were so left.

Now while it may not be questioned that many came to this country as needy adventurers, and for the simple purpose of making money, let the mode of making it be what it might, yet there can be no question but that a great proportion came here, though they may have wished to have bettered their condition, for the purpose of avoiding the tyranny practised in the old world. It was uncomfortable to them, and they wanted to live in a situation where they should not be under so much restraint; and, considering the smallness of the island of Great Britain, it may be presumed that those who came from thence in a great measure sympathized with one another in this thirsting after a greater civil liberty than they there enjoyed; and though they separated far and wide when they arrived on these shores, yet the same

spirit animated them, and the same thoughts filled their breasts. In all their controversies with the mother country, this spirit was ever uppermost: it manifested itself at the time of William and Mary, of Chromwell; and finally it broke out, in its distinctive character, at the time of the revolution. At this time it had gained, if we may so speak, a form and substance. The repeated discussions on the subject throughout the colonies, for a series of years, had matured and brought out the idea in prominent relief. The idea this land should be the land of the free, that this great continent should and ought to be governed by impartial laws, and not by that system of favoritism, tyranny, and misrule, that was so general throughout the kingdoms of Europe, was fully developed. They meant to establish a government of peace and good-will to all men, and where every one might "sit under his own vine and fig-tree without any to molest or make afraid." We find them in all of their proceedings, however much they may have been opposed by individuals, or however often they may have been prevented in so doing, laboring to carry out this idea to its fullest extent; and it is evident that one of the obstacles in the way of obtaining this universal liberty was the trade and traffic in slaves. They felt its injurious effects; and Mr. Jefferson made it one of the grounds of complaint in the draft of the Declaration of Independence — and it was approved by the committee who were appointed to make this draft— that Great Britain should have forced these people

upon them in the manner she did, against the remonstrances and wishes of the colonies. But as certain individuals in this country had entered into the traffic, and many had what they considered their property in these people, interest was made to have that clause in the Declaration struck out, and it was done. But the great principles that animated them still remained embodied in the instrument; and, the moment it was adopted by this country, every slave was free; and such undoubtedly must have been the understanding of the men who promulgated it, unless they should be accused of the want of understanding the meaning of the words they had used. Could the men of that age use the language "that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness," without being aware, if the negro was a man, he must be included? We think not. No exception was made to him, and his situation was fully understood by the man who wrote these words, and by the people who adopted them as their own; and the only cause why the negro did not receive at that time universal freedom throughout the States was, as we believe, because they had no champion among their own number to assert and make known their rights, and bring their cause before the mind of the public. Certain it was, the men of that age expressed themselves openly and unequivocally, and we humbly think it was owing to their not being seconded

by our colored friends, they did not succeed in their wishes.[1] But a supposed interest, joined with a real or pretended claim of others, of the consequence of freeing so many in their midst who had just come from a heathen land, ignorant, as they supposed, or pretended they were, of the ideas of civil liberty, and hearing nothing from this race to the contrary, they were prevailed upon to pass over the subject in silence, though they did not and would not give up the principle which, if carried out, would cause the freedom of every man in our land. As an evidence of this, we find that slavery, in those States where the whites greatly overbalanced the colored people, was immediately or prospectively abolished, and the most prominent men of those days took an active part in having it done.

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[1] General Warren, in his address on the 6th of March, 1775, only one hundred and nine days before his death on Bunker Hill, delivered in the Old South Church, on the anniversary of the celebrated Boston Massacre, gave utterance to the following sentiments: "That personal freedom is the natural right of every man, and that property, or an exclusive right to dispose of what he has honestly acquired by his own labor, necessarily arises therefrom, are truths that common sense has placed beyond the reach of contradiction. And no man, or body of men, can, without being guilty of flagrant injustice, claim a right to dispose of the persons or acquisitions of any other man, or body of men, unless it can be proved that such a right has arisen from some compact between the parties, in which it has been explicitly and freely granted."

CHAPTER II.

OBSERVATIONS MADE BY THOSE ENGAGED IN THE REVOLUTIONARY WAR, ETC.

As an evidence of the fact of the desire our fathers entertained for universal liberty, and that this country should be the land of the free, we shall quote from some of the state papers put forth by congress, and from the observations made by distinguished men of that day. We shall begin by taking an extract from "A Declaration by the Representatives of the United Colonies of North America, setting forth the causes and necessity of their taking up arms. Directed to be published by General Washington, upon his arrival at the camp before Boston, July 6, 1775." Let it be noted that this was in the *first* document put forth to the American army, through the *first* general that had been appointed by the *congress* of the *United States;* and that it must have been observed, at the time, with a great deal of interest, as marking out, in a manner, the principles which actuated them. It says, —

"If it was possible for men who examine their reason to believe that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over, others, marked out,

by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might, at least, require from the parliament of Great Britain some evidence that this dreadful authority over them has been granted to that body. But a reverence for our Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect on the subject, that government was instituted to promote the *welfare* of mankind, and ought to be administered for the attainment of that end."

Extract from a Petition sent by Congress to the King of Great Britain, July 8, 1775.

"Your majesty's ministers, persevering in their measures, and proceeding to impose hostilities for enforcing them, have compelled us to arm in our own defence, and have engaged us in a controversy so peculiarly abhorrent to the affection of your still faithful colonies, that, when we consider whom we must oppose in this contest, and, if it continues, what may be the consequences, our own particular misfortunes are accounted by us as part of our distress."

Extract from the Address to the American People by Congress, May 8, 1778.

"You cannot but remember how reluctantly we were dragged into this arduous contest, and how repeatedly, with the earnestness of humble entreaty, we supplicated a redress of our grievances from him who ought to have been the father of his people. In vain did we implore his protection; in vain did we appeal to the justice, the generosity, of Englishmen — of men who had been the guardians, and asserters, and vindicators of liberty through a succession of ages — men who, with their swords, had

established the firm basis of freedom, and cemented it with the blood of heroes. Every effort was vain. For, even while we were prostrate at the foot of the throne, that fatal blow was struck which separated us forever. Thus spurned, contemned, and insulted, thus driven by our enemies into measures which our souls abhorred, we made a solemn appeal to the tribunal of unerring wisdom and justice—to that almighty Ruler of princes, whose kingdom is over all."

Extract from the "General Orders issued by General Washington to the Army of the United States, April 18, 1783."

* * * "For happy, thrice happy, shall they be pronounced hereafter, who have contributed any thing, who have performed the meanest office, in erecting this stupendous fabric of *freedom* and *empire* on the broad basis of *independence*, who have assisted in protecting the rights of human nature, and establishing an asylum for the *poor* and *oppressed* of *all nations* and *religions*.

"The glorious task for which we flew to arms being accomplished, the liberties of our country being fully acknowledged, and firmly secured by the smiles of Heaven on the purity of our cause, and the *honest* exertions of a free people to be free, against a powerful nation disposed to oppress them," &c.

Extract from the answer of General Mifflin, the President of Congress, to the Speech made by General Washington, on his resigning his Commission, December 23, 1783.

"Having defended the standard of liberty in this new world, having taught a lesson to those who *inflict* and to those who feel oppression, you retire from the great field of action with the blessing of your fellow-citizens."

Among the foregoing are some of the expressions made by the constituted authorities of the land, and which must have been issued by at least a majority of the different bodies who emanated them. They consequently show the feelings of a large body of the people, and the reasons and object that caused them to resist the proceedings of Great Britain. Whether they were right or wrong in forcible resistance, is another question; we cannot stop here to discuss it, but shall observe, we doubt whether the army, during a good portion of that memorable struggle, could have been kept together, destitute as they frequently were of every comfort and convenience, were it not they were urged on by their love of liberty and of the right, and by such appeals as were made to these inherent principles of our nature. Look at the army at Valley Forge: almost naked in the dead of winter; almost literally without food or raiment, or they had such only as was barely enough to support their animal wants; nay, they had not enough to satisfy their hunger, or to shield them from the severity of the cold. Take the British officer's account, which we shall shortly give, of Marion's situation; and Marion said it was often much worse than when the officer was with him; for they did not always have enough even of potatoes. Imagine to yourself an army of men living in the woods, sustaining themselves upon roasted potatoes, their plates sheets of bark, their tables logs, and their fingers for knives and forks, day after day, month after

month, exposed to the hot sun and chilly damps of a southern climate; and all, as is said, for "liberty;" and liberty not so much for themselves as for posterity. If they were wrong, it seems, at least, we should be charitable towards such failings; but yet here is the principle for which we contend, — that it was for liberty, and liberty alone, that produced our Revolution, and that this was the mainspring and moving power that put in action the men of that day; and without it the Revolution could not have been carried on, nor, so far as human observation can be made, could it have been successfully terminated; and that it was not the liberty of the mass, a disenthraldom of the state from a foreign power, an independency of government, but it was the *liberty of the individual* that was sought; it was to shield him from oppressive taxes, to protect him from being quartered upon by a brutal soldiery, and their money from going to build up a rich few in the island of Great Britain.[1]

[1] In the Introduction to the Biographical Dictionary, compiled by J. J. Rogers, it is said that Mr. Benjamin West told Mr. J. Adams, while he was minister to the court of St. James, that the cause for taxing the colonies without their consent arose from the fact that the courtiers around George III. urged him to build for himself a more elegant palace than the one he was then living in, as it did not compare with the palaces of other kings on the continent; and when he was informed that there was not money enough in the treasury to supply his wants for that purpose, (a million was asked for,) and was told that he might raise the sum in America, he consented to make the attempt; and the famous stamp act was passed in March, 1765. His palace was to have been built in Hyde Park; and Mr. West showed Mr. Adams the

We do not here quote from the Declaration of Independence, because we shall have occasion so often to refer to its language it is not necessary.

Gov. Hancock, in a speech made in 1784, in commemoration of the Boston Massacre, makes use of the following expressions:

"Security to the *persons* and *property* of the government is so obviously the design and end of civil government, that to attempt a logical proof of it would be like burning tapers at noonday to assist the sun in enlightening the world; and it cannot be virtuous or honorable to attempt to support a government of which this is not the great and principal basis; and it is to the last degree vicious and infamous to attempt to support a government which manifestly tends to render the *persons* and properties of the governed insecure. Some boast of being friends to government: I am a friend to righteous government, founded on the principle of reason and justice; but I glory in *publicly avowing* my eternal *enmity* to *tyranny*."

Mr. Hancock was chosen president of the convention of Massachusetts, to take into consideration the adoption of the present Constitution, but did not attend till the last week of the session. It was said a majority of the convention would be against the adoption, and that the governor was with the opposers.[1] "Certain amendments were proposed to remove the objections of those who thought some of the articles deprived the people

site which was there marked out for that purpose. Thus, for the sake of a *palace*, George III. lost a *kingdom*.

[1] Biographical Dictionary, Art. *Hancock*.

of their rights. He introduced those amendments with great propriety, and voted for the adoption of the Constitution. His name and influence doubtless turned many in favor of the federal government."

It will be seen in the sequel that some of these amendments, written probably to do away, in part, the known opposition of Samuel Adams and Mr. Hancock, had, in fact, special reference to the slaves in the Southern States; and it will be found that, with slight amendments, retaining, however, all the principles contended for, they were finally added to the Constitution. It was this man, in conjunction with Samuel Adams, who headed the opposition to the proposed tyrannical measures of the British government, who makes objection to the proposed Constitution, not only on account of his jealousy for State rights, but on account of its acknowledging slavery at all, and the fear he entertained what might be the result; and it was the same person who, when General Washington proposed to Congress to bombard the town of Boston, while occupied by the British, and while Mr. H. was president of that body, and because it was known most of his property was invested in real estate there, "the house resolved itself into the committee of the whole, in order to give him an opportunity to give his opinion."[1] After he left the chair, he addressed the chairman of the committee of the whole in the following words:

"It is true, sir, nearly all the property I have in the

[1] Biographical Dictionary, Art. *Hancock.*

world is in houses and other real estate in the town of Boston; but if the expulsion of the British army from it, the liberties of our country require their being burnt to ashes, issue the order for that purpose immediately."

Samuel Adams, who with Hancock were the only two individuals the English government could not pardon for their rebellion in the first stages of the difficulties, objected to the adoption of the Constitution as proposed, and stated he could not give it his support unless certain amendments were recommended to be adopted. After consultation, amendments were prepared, which were brought before the convention, and referred to a committee, who made some inconsiderable alterations, which being accepted, the Constitution was adopted. Some of these, as we have just remarked, were afterwards agreed to as amendments to the Constitution, and form at present a part of that instrument. We do not think they were altogether such as we at the present day should like, because they are not so distinct as we could wish; yet they secure the person from excessive fines, and secure him, before punishment, a trial by jury, and also freed him from cruel and unusual punishments. He also objected to the article that made the State amenable to the courts of the nation. He thought it would reduce them to mere corporations.[1]

[1] It is said that, when it was found Messrs. Hancock and Adams were opposed to the adoption of the Constitution, the people of Boston held a meeting in the tavern called the Green Dragon, and passed some very spirited resolutions on the subject, urging its

We do not know whether Gen. Marion, of South Carolina, held slaves; yet, as he so forcibly expresses the feelings of the human heart in its longings for freedom, and shows so distinctly the cause that could hold together our ill-clad and bad-provisioned army, and moved them to the contest of so great a struggle, we cannot forbear giving an extract from his words.

His expressions occurred on the occasion of the British sending a flag from Georgetown, South Carolina, for the exchange of prisoners. The young officer, after transacting his business, being invited to dine, was seated on the trunk of a fallen pine, and one of the men was requested to hand the dinner; whereupon he drew a quantity of sweet potatoes from the ashes near by, and, after blowing them with his mouth, and wiping them with the sleeve of his shirt, set them between the general and the officer on a large piece of bark. The young man not relishing his food very well, and not able to refrain from laughing at his reception in the *American general's camp*, and at the bill of fare, observed, after other conversation, he did not believe it would be easy to reconcile his feelings to a soldier's life on Gen. Marion's terms,—

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adoption, and that these proceedings were the occasion of the attempt made by Hancock and Adams to reconcile the principles of the Constitution to their ideas of liberty and justice; and, having recommended amendments which would secure the slave his individual rights, and the rights of the States, of which they were also very jealous, they satisfied their consciences to its other provisions; and, after these amendments were adopted by congress, they ceased their opposition.

"*All fighting, no pay, and no provisions but potatoes.*"

"'Why, sir,' answered the general, 'the heart is all; and when that is much interested a man can do any thing. Many a youth would think it hard to indent himself a slave for fourteen years. But let him be over head and ears in love, and with such a beauteous sweetheart as Rachel, and he will think no more of fourteen years servitude than young Jacob did. Well, now, this is exactly my case. I am in love, and my sweetheart is LIBERTY. Be that heavenly nymph my champion, and these woods shall have charms beyond London and Paris in slavery. To have no proud monarch driving over me with his gilt coaches, nor his host of excisemen and tax-gatherers insulting and robbing, but to be my own master, my own prince and sovereign, gloriously preserving my own national dignity and pursuing my true happiness, planting my vineyards, and eating their luscious fruit, sowing my fields, and reaping the golden grain, and seeing millions of brothers all around me equally free and happy as myself, — this, sir, is what I long for.'

"The officer replied that, both as a man and as a Briton, he must certainly subscribe to this as a happy state of things.

"'Happy!' quoth Marion; 'yes, happy indeed; and I would rather fight for such blessings for my country, and feed on roots, than keep aloof, though wantoning in all the luxuries of Solomon. For now, sir, I walk the soil that gave me birth, and exult in the thought that I am not unworthy of it. I look upon these venerable trees around me, and feel I do not dishonor them. And when I look forward to the long, long years of posterity, I glory in the thought that I am fighting their battles.

The children of different generations may never hear my name, but still it gladdens my heart to think that I am now contending for their freedom, with all its countless blessings.'

"Such was the effect of this speech on the young officer, that, when he returned to his own camp, being asked by Col. Watson, his commanding officer, what made him look so sad, he said, 'Why, sir, I have seen an American general and his officers, without pay, and almost without clothes, living on roots, and drinking water; and *all for* LIBERTY! what chance have we against such men!'"[1]

The young man, whose name was not given in the account, "could not rest till he had thrown up his commission and retired from the service."

General Wayne, in his letter to General Washington on the surrender of Stony Point, wrote to this effect:

"DEAR GENERAL,—The fort and garrison, with Col. Johnston, are ours. Our *officers* and *men* behaved like men determined to be *free*.

"Yours most sincerely, ANTHONY WAYNE."

General Washington, in his Farewell Address, makes use of this expression: "Interwoven as is the love of liberty with every fibre of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment."

"George Bryan,[2] of Philadelphia, who was a delegate to congress in 1775, and in the State legislature in 1777, planned and completed an act for the gradual

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[1] Biographical Dictionary, Art. *Marion.*

[2] Biographical Dictionary, Art. *George Bryan.*

abolition of slavery, and which will remain an imperishable monument to his memory."

"James Clinton, Esq.[1] of New York, is said to have been characterized by wisdom and patriotism. He was a republican in principle and practice."

"William Henry Drayton,[2] of South Carolina, in his charge to the grand jury, inculcated the same sentiments in favor of liberty which were patronized by the '*popular*' leaders; and, in concluding a charge to the grand jury in 1776, he makes use of these expressions: 'In a word, our piety and political safety are so blended, that to refuse our labors in this divine work is to refuse to be a great, a free, a pious, and a happy people! And now, having left the important alternative, political happiness or wretchedness, under God, in a great degree in your hands, I pray the supreme Arbiter of the affairs of men so to direct your judgment, as that you may act agreeably to what seems to be his will, revealed in his miraculous works in behalf of America, bleeding at the altar of liberty.'"

General Horatio Gates, who, it is well known, was next in command to Washington, when the Revolution was completed, retired to his plantation in Virginia, and, after residing there seven years, moved to New York, and gave freedom to his slaves. "Instead of turning them to the highest profit, he made provision for the old and infirm, while several of them testified their attachment to him by remaining in his family."[3]

We cannot but think it was the views held forth

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[1] Biographical Dictionary, Art. *James Clinton.*

[2] Biographical Dictionary, Art. *William Henry Drayton.*

[3] Biographical Dictionary, Art. *Horatio Gates.*

in some of the preceding quotations, that arrested the attention of Lafayette, and finally the sympathy of the French nation.

My honored grandfather — whose name was George Frost, who resided in the State of New Hampshire, and who was a member of the congress in 1778—9, and who was also a judge in one of the State courts, and whose popularity was such, that, in one office to which he was elected, there was but one dissenting vote cast against him, — before the Revolution, held slaves;[1] but, as soon as the State government went into operation, he freely gave them their liberty, because, according to its bill of rights and its Constitution, which perhaps, from his standing, he may have had an influence in shaping, they were inconsistent with the system. Slavery, at that time, ceased in that State; it was the same in Massachusetts; and, sooner or later, it ceased in all of the States north of Mason's and Dixon's line.

Such, then, being the expressed views of so many of those who took an active part in our

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[1] He had two, — one an elderly woman, the other a young man. The woman, when she was told she was free, said she had a good home, she knew not where she could get a better, and she should like to, and she did, stay where she was. The young man sought a home elsewhere; but, after a few months, finding it was necessary to support his animal existence by labor, and not finding any place better for that purpose, he was glad to return. As it was with them, so it would probably be with a good portion of our colored people at the South. Wherever they have been properly treated, if they should have their liberty, they would undoubtedly remain on the same estate on which they happened to be at the time they should receive their freedom.

revolutionary struggle, (and these are but few out of many,) can it be possible that these men, when they came to provide for the administration of justice, and the general welfare of the country, which they had rescued from the hands of an oppressor, could have guaranteed to any portion of this country that they would maintain within its borders a system that would be in violation of every principle they had heretofore professed, — that they would guarantee an institution which many among their number had already denounced as one of the evils against which they had struggled, and the means by which that system was perpetuated has been termed by our government piracy? It cannot be! We would renounce the thought. That many of them may have been mistaken in their views, and that they did not fully carry out the principles they had promulgated, or rather they did not enforce the carrying them out, we must admit. But, because we admit this, it is not necessary that we must deny them all desire, on their part, to have fulfilled all their obligations to their country and the world. They had a great work to accomplish; they had much opposition to encounter, both from secret and open foes; and we must be thankful they accomplished as much as they did, and now help carry out their principles of liberty, either upon the foundation they laid, or upon others, which greater light in this later age may have thrown in our path. But, before we lay any other foundation than that that is laid, let us clear away the rubbish that has been thrown upon it, and see

if it is not sufficiently broad and well founded for all the purposes we would accomplish; and, if it is so, we may be saved the trouble and expense of laying another. For this purpose, we will go to the Declaration of Independence, the Confederacy, and to the Constitution. What is the distinctive character of each and all of these instruments? Without commenting on the explanation since given of the expressions on the subject of the equality of man, that they are but a "flourish of trumpets," what do they say?

CHAPTER III.

THE ARGUMENT DERIVED FROM THE DECLARATION OF INDEPENDENCE, THE CONFEDERATION, AND THE CONSTITUTION.

The Declaration of Independence declares, — "We hold these truths to be self-evident, — that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their *just* powers from the consent of the governed; that, whenever any government becomes destructive to these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." Here, we think, are principles broad and comprehensive enough, and which, if carried out, would annihilate, and in fact, when they were adopted by the people of the United States as their opinions, and the reasons why they took up arms against the mother country, did annihilate, so far as words could, the whole slave system. That moment, every slave in the United States was

free; and, if our colored friends had taken advantage of the declaration here made, and laid in their claim to be included in the family of man, and as a portion of the people of the United States, we do not see, we cannot see, how their claim could have been disallowed by the men of that age. In fact, we believe the writer of these sentiments, seeing how utterly the colored man's rights were denied him, suggested to his mind the expressions here used, and he meant they should be broad enough to cover his case; and, unless we deny to him and the men associated with him the knowledge of the meaning of words, and of their bearing, we cannot get rid of the consequences; they meant every person in our country should be free. They made no exception to the African race; but, on the contrary, it is well known the person who wrote this declaration made the observation, that he trembled for his country, when he reflected that God was just, and that he could not take sides with us in such a contest as might take place between the oppressor and the oppressed. We have seen what many of the most active men engaged in that Revolution have said; we know what was the action of the States north of the Potomac; and we must come to the conclusion that the people of that time both understood the meaning of the language here used, and meant to have the principles carried out to their fullest extent. In order to show that such must have been their intentions, we will go on and examine the Constitution, and endeavor to see how that harmo-

nizes with these sentiments; but, before going to that instrument, we will make a few observations on the articles of the Confederation.

The Confederation was formed at the commencement of the revolutionary war. It was a league among sovereign States for the purpose of repelling a common enemy; and, as it was formed in anticipation of an arduous contest, it is for the most part taken up in defining the powers of congress and the several States, as regards the preparations and carrying on of warlike operations, and in describing the powers of the several States, and that of congress in their action on this subject. They had just made their declaration of sentiments; it was for liberty. They had taken up arms; and it was for liberty. They were to be united; and we perceive this idea of liberty to be the prominent one running through this whole instrument. Without making any other professions than those they had made in the Declaration of Independence, they, in the first place, simply style the confederacy "The United States of America." Then each State was to have its own sovereignty, freedom, and independence, and all powers which were not expressly delegated to congress. It was a "league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare," &c. And, "the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in the Union, the FREE inhabitants of each of these

States (paupers, vagabonds, and fugitives from justice excepted) shall be entitled to all the privileges and immunities of *free* citizens of the several States; and the people of each State shall have free ingress and egress to and from every other State," &c. This sentence is the only one to which allusion is in any way made to slaves in this country. A stranger could not determine that there were any, but by the word *free* as applied to persons; and this word is not uniformly used before the term *people*, even in this very sentence. It was a word, undoubtedly even in its connection, forced in, much to the discomfiture of many; for it will be perceived that the expression, "the people of each State shall have ingress and egress to and from every other State," does not have the word *free* before it; so that, under the Confederation, if this sentence should be construed in its enlarged sense, every slave, if he belonged to the family of man, would have the power of going from one State to another as he listed. He might be deprived of the privileges of a free citizen in every thing but locomotion. This, according to the strict construction of the language, was not denied him.

In article 15th we have this expression: "Every State shall abide by the determination of the United States in congress assembled, in all questions which by this Confederation are submitted to them." Now we should construe this, that any question arising, in which the "common defence," the "security of liberty," the "mutual and general

welfare, and the perpetuation of mutual friendship and intercourse," was involved, was a fit subject for the action of this Confederation; and, if they at the time thought slavery was to interrupt these relations, they would probably have acted definitely on the subject; but, as it was, they took an indirect course, and left it for the colored man to ascertain what his rights were from the principles they had established. But the Confederation, as it is well known, for its want of vitality in other respects, did not, as was urged by some, though denied by others, fulfil the intentions of the people of the country, and the Constitution was adopted. The question now arises, what were the intentions of the men who went to Philadelphia to form this Constitution, and the intentions of the men who sent them there? Where shall we look to ascertain this? Here was a large and extensive country. They had, by the course of Providence, been put in possession of it, and it belonged to them to make rules and regulations, or, in other words, laws, by which the inhabitants should be governed: they had separated from the mother country for the ostensible purpose of freeing it from the tyranny she was endeavoring to practise towards it, and this great continent, from Maine to Georgia, and from the Atlantic ocean to the Mississippi, was to be under the guidance and direction of the men who should compose the convention then about to sit. Had the principles that had actuated our revolutionary fathers changed? had their love of the right, their love of liberty,

at all declined? had they forgotten the principles they had promulgated in the Declaration of Independence and their other documents? No! for the first words they promulgate to the world, after their arduous deliberation, were, "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of *liberty* to ourselves and our posterity, do ordain and establish this Constitution for the United States of America,"—language simple, expressive, and easily understood. The object, as they say, was to establish justice, as if injustice had in some measure prevailed in the land, and also to see that right should predominate; and, if there were any practices in the United States that militated against the right, then it was their intention they should be done away; consequently, such evil practices would be in opposition to the object for which the Constitution was formed. Now if slavery is wrong — and it was so considered by our fathers — the system must come under the class of those practices which they considered unjust; and that they did consider slavery unjust may be proved from the fact that the war of the Revolution was wholly carried on, on the principle of resisting the attempts of Great Britain to enslave them by improper taxation: they could not bear to be unjustly taxed in their purse; how much less, then, could they have borne to have their whole body and soul under the command of any one who

seemed disposed to take them. They evidently must have considered such a system as one of the greatest wrongs, and directly opposed to the first principles of justice.

The next object was to insure the "domestic tranquillity." The question here arises, how can this be secure? evidently by "establishing justice;" and any thing that is at war with justice is at war with peace; and, consequently, no lasting tranquillity can be maintained so long as injustice prevails. Man seems as if he could not be at ease under oppression, as if his whole nature revolted at it, and wars have ever been the consequence of it. History of wars, both public and private, portrays a series of attempts to throw off the yoke of the oppressor; and can the United States hope to secure peace in any other way than by acting uprightly? If so, her hope must be vain. The only sure course is, not only in her foreign, but in her private, relations, to act towards all with that impartiality and good faith that will secure respect, and give no occasion of offence. No other course can possibly secure tranquillity but such a course of action. Is slavery, then, treating the colored man in good faith? does this give no occasion for offence in treating him as she does? has he, under this system, all the rights of the white man? can he come and go like him? does he not perceive how widely different he is treated, and does he not take note of it? Let the South Hampton insurrection answer; let the Florida war answer; let all the various insurrections and attempts at such be

written in a book, and sum up their number, and see if he has been satisfied with his treatment, and if we can hope, by the continuance of such treatment, he will be likely to learn to acquiesce in it. No! the facts are, no domestic tranquillity can be maintained under a system of slavery; and even if our fathers thought it could, though we do not believe they did, yet, as it has since been ascertained there can be none, it would be our bounden duty, both as their decendants, and as Americans, in order to fulfil their object, to do away not only with slavery, but every other practice, so far as in our power, that should interrupt this tranquillity. And we must be false to our trust if we do not. We should be jealous of every practice, whatever it might be, that would have a tendency to bring into collision the different sections of this great family, and no one part of it can have the right to introduce such practices as would have such a tendency, without making itself liable to have its conduct scanned and questioned by the other part; and if it can be provéd that such would be the case, then the whole would have a right to interfere, and cause such proceedings to cease, and bring about a different order of things. Let it not be here said each part has a right to regulate their own affairs. None have a right to do wrong; and, if slavery is a wrong, then have not the South the right to continue it; and, viewing it in this light, has not the South been changing her mind on the subject of its guilt, in part, because the Constitution will not uphold her in her course? There are

many reasons to suppose it is so, and the cause of her sensitiveness is owing to the consciousness of her dereliction from duty, and the opposition of her practices from the first principles of right, and the object for which the Constitution was formed.

The next object was to provide for the common defence. Even in this purpose, although it might more particularly be applied to foes without, and the securing ourselves from external attacks, the common defence cannot be so well provided for when it is necessary that a good portion of our troops have to be employed in keeping in subjection a portion of our own people; and therefore, in providing for the common defence, as wise legislatures, and a wise people, we should take into consideration all the circumstances that would interfere with the facility of defending the country in the best possible manner. If, then, slavery, or any other circumstances, arise to prevent its defence, and these domestic relations come in to thwart, and to prevent the security of the country from external foes, then the congress of the United States would not be fulfilling its duty, did it not do away, so far as in them laid, the obstruction, and prepare the country for the defence, one of the objects for which the Constitution was formed. We see not how we can get rid of such a conclusion; and that slavery does lay the country open to the facility of external attacks, and that slaves, as a body, might be easily worked upon to join a foreign standard, might be easily conceived; and that the Hon. John Q. Adams was correct, when he

asserted the whole system might come under the action of congress, by the way of the war powers.

The next object was to "promote the general welfare." How is this to be done? Certainly not by fostering and maintaining within our borders what is, and what has heretofore been, considered and acknowledged a moral and political evil; because such a proceeding could not be for the general welfare. And here, again, we think, may be seen one of the causes why our southern politicians are so anxious to have the character of slavery changed, and that it should be considered a blessing rather than a curse, and the reason of their anxiety to show that it was an institution of the Bible.[1] For none of them could hope, for a moment, now at this late day, to maintain that the slaves of this country had not been in the land a sufficient length of time to learn the plan of civilized society, if they had been properly instructed. They cannot now complain of the want of time, because they have, in many cases, made it penal to teach a slave to read. Hence they would change the ideas of the civilized world on the character of its guilt, and would denounce every one who would not agree with them upon the subject as "being worthy of death without benefit of clergy." Fatal mistake! to suppose mankind will ever consent that wrong is right, and right wrong. The public mind need or needed but to be enlightened on the subject, to cause

[1] Hon. Mr. McDuffie's *patriarchal institution.*

them to express a universal execration of the foulness of its nature. Our fathers may in some measure be excused for not taking more summary measures for cutting off so unseemly an excrescence, from the opposition they had to encounter, and the trials and troubles they had already gone through; and, no doubt, the argument that they would receive within their civil privileges a body of comparatively heathen and ignorant people, who would not appreciate their situation, and might endanger, through their want of knowledge, in that part of the country where they were the most numerous, the free institutions which they had been so long laboring to establish; and it was mainly for this reason that they passed over the subject with the silence they did, with the expectation that what they had accomplished would soon extirpate the evil. But, as has been before remarked, it was a sad mistake; and, since a sufficient time has elapsed to have instructed these men, so that that excuse can have now no weight, we should exert all our powers to do away an evil so monstrous, and relieve our land from a disgrace under which it is laboring, and from the necessary evils slavery must and does bring in its course, such as ignorance, dissipation, vice, immorality, and the consequent degradation and death to which these lead, and which are utterly opposed, not only to the general welfare of this country, but to a large portion of mankind in different quarters of the globe. The arts, sciences, manufactures, even agriculture, declines under its withering influences.

Under the general welfare of the United States, which was placed in the power of congress to consult, might they not take into consideration the whole subject of slavery. We cannot get rid of this by saying there was any compact, for there was none: there is neither letter nor page where it can be found. But here is a declaration before the world, and this nation has committed itself, that this country shall be ruled by impartial laws, and that the congress of the United States shall consult in all things the general welfare of the people. And if they do not, then are they false to their trust, and do not fulfil the intention of our fathers; and the objects for which the Constitution was formed are laid low in the dust, and we cannot look to that instrument as a guide and a rule for the conduct of our representatives: nor can foreigners look to it as an instrument from whence they can learn the genius of our government; and if they cannot look here to find out the object for which it was formed, where can they? evidently, nowhere. Here is the only official declaration given to the world, of the object, intent, and purposes, for which any government was adopted; and if we of this generation have departed from these principles, and mean this great continent shall be ruled or governed on different ones, it is time we should change the caption to the Constitution, and place another in its stead, that mankind may not be deceived, and particularly those of the African race, if they should read this instrument to become acquainted with its principles, for the purpose of determining whether to come to our shores.

The last and most important object for which the Constitution was formed was to secure liberty not only to themselves, but to us and our posterity; or, as they expressed it, "the blessings of liberty to ourselves and our posterity." They looked abroad upon this great land; they found a great portion of this continent placed under their jurisdiction; and, however fallible many and perhaps all of them may have been, and however anxious many may have been to secure to the few the principal portion of the government, yet a vast majority, perceiving the inestimable value of individual liberty, and that it was by this alone any great improvement could be carried on in civil society, they made this the keystone of the arch that was to bear the weight of the republic. This was to be considered as paramount; it capped the climax of the blessings to be communicated to generations yet unborn. They had become acquainted with the evils of individual slavery, as it then existed in the African; they had successfully resisted the attempt of Great Britain to impose on them a political slavery; and they now stood forth to the world, free and independent. They had, by severe exertions, secured to themselves freedom from the restraints of the mother country; and they were now preparing to secure themselves from any unwarrantable exercise of power that might spring up among themselves, and prevent any individual or individuals from gaining any unlimited power. Propositions had been made, and rejected, to create these United States into a

monarchy, and to erect a throne in this country; the people and the master spirits of the land determined otherwise. They understood the question on which they were acting, the meaning of the words they were using, and their import. They consented to no proposition they did not mean to carry into effect; but every thing, so far as we can understand their determination, was distinct and plain, though all of their subsequent acts might not have been so. In that assembly, as there ever will be in all assemblies of men, there may have been some who would have gladly perverted the powers delegated to them, to subserve their own vile purposes, or who, through righteous fear of the consequences of popular government, wished to give as much power to the executive as they thought would be necessary to carry out any measure that congress might consider right, independent of the general mind, — men who, having no faith in the power of the people to take care of themselves, and who were ever anxious to provide for them suitable directors and governors, and consequently were continually proposing guards and checks for their restraint, in fact, in many things gave, both directly and impliedly, powers to congress that the people, in their conventions, did not wholly approve; and, consequently, many amendments in favor of liberty were proposed, and were in part adopted, and now make a portion of this instrument. In Virginia, and in many of the States, the opposition was very strong, because congress assumed so

much ; and though in the caption it would seem as if there was nothing frightful, yet, as we shall see, the expression " we the people " produced in the breast of one man, if no more, great distrust ; and, if the people ever became so corrupt as to change the meaning of terms, and call wrong right, and right wrong, as they have seemed of late willing to do, then, indeed, might such an expression be fearful, but not otherwise.

Thus we have gone over the caption of our Constitution ; and, if it should have its principles carried out in good faith, there could not possibly be any danger, excepting that those who should legislate for the country might be deceived in their course of action. No one, however, could have any cause to complain that his individual rights were wrested from him, as the courts would at all times be open for his protection.

We will now take up in order the different articles of the Constitution that have a bearing on our subject, and try to ascertain what may be their meaning. In article 1st, 2d section, 3d paragraph, we have this expression : " Representatives and direct taxes shall be apportioned among the States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons." On this it may be supposed there was considerable debate ; and, as it is the strong hold on which many here

ground their assertion that the Constitution guaranteed slavery, it may be well to dwell upon it, and consider it in its various relations. We have examined the secret proceedings of the convention which prepared the Constitution, but we cannot find in them any thing said at the time on which to make up a judgment of the intent and meaning of this clause, and consequently our remarks here will be drawn from what appears on its face. To one unacquainted with all the circumstances of the case, the language would undoubtedly be unmeaning. They would not know what was meant by the "three fifths of all other persons." They here find that taxes and representation were to be apportioned by reckoning together all free persons, and those bound to service, and three fifths of all other persons, excluding Indians not taxed. Now the term *free persons* might have relation, and be used in opposition, to those bound to service, or to paupers, as well as other individuals; and, unless we knew there were slaves in this country, we could not suppose, from what had before been said, it could be possible there were any; and undoubtedly our fathers were ashamed to use the term *slave*, as applied to the condition of any people then under their jurisdiction. They therefore avoided it; and it would seem as if some one had worded this phrase in such a manner that it would not require an alteration of the Constitution for the purpose of having representatives chosen, or taxes collected, provided the system of slavery should be done away, and were careful to have it so

worded as to exclude the idea, as much as possible, that they had any thing to do with it; and although it has been asserted that, because the Constitution recognized the system so far as to base taxation and representation upon it, (for it is maintained, and without doubt it is the case, the three fifths of all other persons meant slaves,) consequently slavery is guaranteed, does this necessarily follow? We think not. It only says, while there are any other persons in the community besides free persons, and those bound to service for a term of years, five of all others should be considered but equal to three; but if there were no such other persons, there could be none to be so reckoned, and consequently every man would be considered as a man, enjoying all the privileges of a freeman; so that the construction of the sentence evidently looked to the time when there should be no such other persons. But, even taking it as looking to the perpetual continuance of slavery, and that taxes and representation were to be apportioned accordingly, and our fathers made the bargain with their eyes open, and that for these considerations, as has been alleged, they agreed to this section, because slaves should be taxed in proportion to their representation, and that, for this reason, we have guaranteed the preservation of this property, we maintain that, as the consideration has been taken away, the corresponding obligation is also taken away. It was then expected that this government in a great measure would be supported by direct taxes, and conse-

quently the advantage given the South in the superior number of representatives in proportion to the free inhabitants would be balanced by the greater amount of taxes they would have to pay in proportion to their representation; and, if they did make such a bargain, though in morals it could not or should not stand, yet perhaps it may be said it should continue to be binding upon all future generations. But we ask what is now the case? and what brought about a different arrangement? and why are there at this present day no direct taxes for the support of government? We say, because the South, finding she had made a bad pecuniary bargain, took advantage of the reluctance which most men, and particularly the poor man, had of paying away money in a direct manner for the use of the powers that he, joined in with this reluctance, and used her persuasion to induce a majority of congress to raise their taxes by indirect means, upon the imports of the country; and, although it was done with much opposition of the North, yet the South, appealing to this popular prejudice, as well as advancing the idea, and agreeing with the northern mechanic, that such a course would help manufactures, succeeded in gaining her object thereby, as undoubtedly she well understood, threw most of the burden of the government on the North; for they could say to themselves, and without doubt did, "As our slaves do not use much, if any, foreign goods, we shall have but little or no duty to pay for what they consume, while we shall have sixty-one votes for every hun-

dred of our slaves, to elect members to congress. Saving what foreign goods we and our immediate families may consume, we can arrange it so that the coarse clothing that will answer for our slaves can be manufactured in this country, or else have it free of duty, and, by this operation, save ourselves from the onerous necessity of paying taxes, and throw them all off on our northern friends." This, whether they reasoned so or not, they effectually have done. The North then, being driven into the measure, against her wish, or at least against the wish of those who made the bargain, and it being said, and at last finding manufactures might be made profitable, if they could have the home trade, and that there was a prospect, if it could be secured to her, she would be able to maintain herself against foreign capital, consented, and a tariff was made, when it was thought by the South it might also be a benefit to her. But, after a series of years, when it was ascertained that the "peculiar institution" there were not congenial to such labor, then threats, bravadoes, and all the arts and contrivances of which their fertile geniuses were capable of devising, were put in requisition to reduce the duties on all goods to such an amount as would just enable the government to get along without affording any protection to manufactures, or having that at all in view. Now, although there may be no objection to having things as they now exist, yet we do say all the consideration for which the North guaranteed slavery to the South (though we do

not admit she ever did) has been forcibly taken from her, and she is no longer under any obligation to fulfil her part of the contract. The value received is gone, and taken, too, without her consent; and therefore she is under no further obligation for any guaranty that may be said to have been given for the continuance of so foul a system, admitting, also, (which is not admitted,) she had a right to make such a compact, or guaranty. But, so far as has been made public, there is no evidence any such was given, or ought, or could have been given. And, besides, we think it would be a very pertinent question to ask, — did the colored man agree to be considered but three fifths of a man? did he acknowledge the right of the delegates, assembled to form the Constitution, to legislate for him? or, if he did, did he suppose that those delegates were to take away all his rights? and has he ever yet acknowledged the justice of those proceedings? It can safely be answered, no; not until he has a right to vote, and be heard on the floor of congress, can it be said he has agreed to his debasement.

Neither can the American congress ever usurp the right without involving itself in the most palpable guilt. They therefore did not, they could not admit, and they would have been ashamed to have expressed openly, if they could have admitted, there was a person in the land from whom they were taking away the right of being fully heard before those who were exercising the right of taxing him. Here, however, the influ-

ence of the slaveholder was felt, and here it came up in opposition to the free spirit of the land, and endeavored to bend it to its own purposes, and, after long, labored, and vexatious discussion, and an express determination to trig the wheel of united freedom by the more southern States, consent was at last obtained, that, if there were any other persons in the community than free persons, and those bound to service for a term of years, then they should be considered but as three fifths of a man. But, in such a forced consent as that, when so many other rights were thought to be involved, can it now be argued that this consent must be held in the light of a guaranty to maintain forever a system of slavery in our land? We think not; the most that can be made of it is, an evil of such magnitude existed, they felt themselves powerless to root it out; but, if the system is maintained, that community who upholds it shall not have so extensive political privileges as the one that does not, a portion at least of her people are but three fifths of other men. Whether there is not a deep censure of those States that will suffer their population to be so degraded, implied in the use of the language of this section, we think may be made a question.

In the first clause of the 8th section, article 1st, power is given to congress "to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; that all duties, imposts, and excises shall be uniform

throughout the United States." Now, if it should be denied congress was the representative of the people, but of the States, and, as such, had no power to interfere with the internal policy of the States, yet this clause would show that, as representatives of the States, it was vested with the power to provide for the common defence and the general welfare; and, having the power, it is their duty to attend to both these subjects; and, if a discussion should be had on any subject involving either, and, consequently, if any State, or number of States, are pursuing a system of policy detrimental to either, then it is in their power to have the obstruction removed, and to see that the United States, as a whole, are not injured; and if it can be proved — and we think it can be — that slavery is an obstruction to the common defence, and requires constant care and vigilance of our army, and, consequently, is an expense to the country; and, further, that the general welfare suffers by its continuance, that it injures the morals, the peace, and harmony of the communities in which it exists, and to the advancement of civilization, and the general cause of truth, of virtue, of science, &c. &c.— then, we say, this clause places it in the power of congress, whether it is done as "we the people," or as we the States, to put an end to its continuance. It cannot be argued that a State, or any number of States, may institute such practices within their borders as to require the protective oversight of the others, and yet place it out of the power of these others to say aught against

their conduct. If, therefore, congress should open its doors, that its evils may be discussed, and, after mature deliberation, it is found the evils attending it are not so great as has been represented, as a mere political body they can say so; but if, on the contrary, it can be shown its character is bad, that it is an incubus upon the body politic, a violation of the laws of God and of human nature, then it would be their duty, if there is no other way provided, to act in the premises, and do away a system whose evil consequences to the community are apparent, however much any particular section of country may be wedded to it.

The sixteenth paragraph of the same section and article has relation to the "power of congress over any district that might be ceded to the United States, as the seat of government, and the places purchased for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings;" and the seventeenth to the making "all laws which shall be necessary for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department thereof." The legislative power over the places mentioned above is "exclusive;" no one else is to share it with them, and, consequently, it must be as unlimited as any of the State legislatures. We do not see in either of these paragraphs any allusion made that it was necessary for them to conform to the proceedings of other States to determine them in their actions in regard to the territories over

which they were to exercise their authority. The expression is — and this, let it be remarked, was made before the seat of government was located — that over any spot "not exceeding ten miles square they were to have exclusive jurisdiction," as also the same over the other places, above enumerated, they should wish to purchase of the different States. Among all that has been said or written upon this subject, of the power of congress over the spaces allotted for their use, we cannot but come to the conclusion that no State is to share the power of legislation with them, and that this power of legislation is exclusively in congress: the States relinquished their right when they ceded the territory.

Article 2d, section 9th, first paragraph: "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by congress prior to the year one thousand eight hundred and eight, but a tax, or duty, may be imposed on such importation, not exceeding ten dollars for each person."

Though nothing is said, in this article, what is meant by the words *migration* and *importation*, as respects persons, we will admit, for the sake of the argument, that they referred to slaves, though it might be supposed the putting on such a forced meaning to the word *migration* was altogether gratuitous, and ought not to be allowed; and even the expression "importation of persons" might, without any great departure from the principle of construction, mean any body else beside slaves.

Yet we will let it all pass, and say it was slaves that was meant; and, in so doing, we must confess here was a great dereliction from duty; and though we cannot agree with some that all the delegates who formed the Constitution were sent there to have such a sentence inserted in that instrument, yet it must be confessed there was exertion made to have it done; and our fathers, in imitation of the reed that bends before the storm, gave way to the influences around them, hoping they might erect their heads after the wind had passed, with more security of escaping the destruction which they might think awaited them had they been less complying. But, even here, they studiously avoided the word *slave;* and they gained a point; for, in the Confederation, they had no control over the subject in the different States; but, by this act, they could bring it to an end in twenty years, and they have so done. They have further declared the act to be piracy, with the penalty of death attached to all those who should be found engaged in the traffic. Our southern friends can decide for themselves, whether is the greater crime, buying slaves in Africa and bringing them to these shores, or buying them in one district of this country and sending them to another. For ourselves, we can see none, and must conclude, if it is piracy in the one case, it is robbery in the other. Their country has branded the foreign slave-trade with its proper definition, and we hope a brand equally as infamous will be applied to all who may engage in the buying or selling their fellow-men, whether it be on the land or on the water.

But it may be said, for this acknowledgment of the lawfulness of slavery an equivalent was given; that a clause, which had been introduced by the committee of detail, stating "no navigation act should be passed without the assent of two thirds of the members present in each house," should be omitted, the Southern States being anxious for such a clause, and the North not wishing such an one; and, because that clause was omitted, the North is now bound. But here, again, the bargain is up, the time for its continuance having ceased in 1808; and now the North have as much reason for such a clause as the South; in fact, if that clause had been in, we never should have had an embargo; and our merchants, whose interest was here unworthily sought, had, in the distressing times of that restriction, to pay the forfeit of their selfishness.

Article 3d, section 2d, first paragraph: "The judicial power shall extend to all cases in law and equity, arising under this Constitution; the laws of the United States and treaties made under their authority," &c.; "to controversies between two or more States, between a State and citizens of another State, and between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State and the citizens and foreign States, citizens or subjects."

This section refers to the powers of the judiciary; and, as perhaps it may be one of the most important, it deserves the most profound considera-

tion. As, however, we are not connected with the law technically so called, we may and undoubtedly we shall be excused, if we do not, or cannot, explain and illustrate all the bearings of its different phrases, or be able to illustrate in so full a manner as we could wish the meaning of the term "law and equity, that may arise under this Constitution." But we do think, if we know the meaning of the words "law and equity," that it would be in the power of the slave, or any of his friends, to bring his case before the Supreme Court of the United States, to ascertain whether he can be held in bondage consistently with "law" or with "equity," or consistently with our present Constitution; whether it acknowledges in terms, or by language, in its ordinary acceptation, that could be so construed as to give one citizen or one person of the United States the right over the liberty of another; whether, in the view of this Constitution, all of the people of the United States do not stand on an equal footing, and that it does not acknowledge, by that clause in the 4th article of the amendments, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated;" and also, in the 5th article of the amendments, no person shall "be deprived of his life, liberty, and property, without due process of law;" and also, in the 8th, "excessive bail shall not be required, nor excessive fines imposed, nor *cruel and unusual punishments inflicted*," — the great truth put forth in the Declaration of Inde-

pendence, that "all men are created equal, and that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness," &c.; and that this is the principle on which to found their judgment as to the "law and equity" that should be awarded to every individual embraced within the limits of the United States, universally — not to particular individuals, — not to black, yellow, or white, — not to the *free* alone, — but to the bond, if there were any such. The words are "the right of the people to be secure," &c.; not to the FREE people, but "the people," without distinction, and "no person shall be compelled," &c.; not no *free* person, or no *white* person, but *no* person, applying *person* universally; nor shall "excessive bail be required," &c. "nor cruel or unusual punishments inflicted;" and, consequently, if the black man, or the yellow man, can maintain his character as a man, then must he come under the denomination of one of the persons or people spoken of; and, consequently, no State legislature, or any person in a State, no, nor even congress itself, could dare presume, under this clause, and these articles, to hold, or restrain, or punish, any individual, unless for crime or in case of rebellion, against their consent. The language, it appears to us, is explicit, plain, and straight forward; and if there were, or could have been, slaves, after the Declaration of Independence was adopted, this article, with these amendments, were amply broad to meet every case;

and nothing but the not bringing their case before the courts, on the part of those interested to be free, could have prevented them from becoming so. It appears to us the court was given jurisdiction in the premises, and the language in the amendments is sufficiently clear, that the rights of no person, or any of the people, should be violated in their persons, their property, their liberty, or their life. No allusion whatever is made to there being two classes of persons, or that this language was to be applied to two distinct people; but, on the contrary, *every person*, and *all* the people embraced within the jurisdiction of this government were to receive impartially its protection; and the faith of the government is clearly in fault, if there are any now within its jurisdiction who are denied the privileges here set forth in the 4th, 5th, and 8th articles of the amendments, if a case where a man's liberty was involved has been decided by the courts in favor of slavery; but we believe, in the highest court of the country, no such decision has been made.

The 11th article of the amendments appears to clash with this section; for it says the court shall have jurisdiction in "controversies arising between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects." The 11th article of the amendments says, "The judicial

power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state." In the one it expressly says it shall have jurisdiction in controversies arising between a State and citizens of another State, or a State and citizens or subjects of a foreign State; in the other, it says it shall not be so construed. The meaning of the amendment, if we understand it, is, the court shall not take cognizance of any action, brought by a citizen of another of the States, or a citizen or subject of a foreign state, against one of the States of the Union. On first reading this, we knew not the object of this clashing, or why this amendment was put in. Mr. Marshall, as we shall perceive in another part of this work, says it was occasioned by the indebtedness of the States, and, in their sovereignty, they did not wish to be brought by a member of another State, or by foreigners, before the court in an action of debt. We know not our case is affected by this inconsistency, or that it does prevent a suit being brought before the court to liberate a man held as a slave; and therefore we shall leave it for our lawyers to speculate upon, and reconcile the differences that exist between the original article and the amendment, whenever they may have an occasion.

The courts, however, have jurisdiction in all cases, both original and appellate, in a controversy

between a State and the "citizens thereof," and this is sufficient for our purpose; for, if the negro, or the slave, whether white or black, should bring his cause into a State court, and that court decide he can be held in servitude against his consent, without crime, and punished also for no crime, then may he not appeal to the Supreme Court of the United States, and inquire whether it is lawful, under and in pursuance of the Constitution, "the *people* may be seized in their persons, houses, papers, and effects;" or that "*any person* may be deprived of his life, liberty, or property, without due process of law;" or that "cruel and unusual punishments" may be "inflicted." But, it may said, the slave is not a citizen, and therefore he cannot come before the court; but is not the court competent to try that fact, whether he be a citizen or no, if his citizenship should be denied? and whether, if there is any technicality in the meaning of the word *citizen* in some cases, the use of the word *person* in the amendments does not destroy that technicality with regard to the people of the United States? This, it would seem, would be the first point in the case for their decision; and whether the expression, "nor shall any person be subject for the same offence," &c. "nor be deprived," &c. will not include all persons, whether white or black, bond or free; and, whether in the expression, "the right of the people to be secure in their persons," &c. the colored man must not be included as one of the people, and that he should be defended against any "cruel or unusual punish-

ment;" not simply as might be practised by the government of the United States, but whether practised towards him by a State or any of the citizens thereof; in fact, whether the United States, or a State, can allow any of its people to be deprived of their liberty by any one of its citizens; and, if so, whether the United States, or the State, is not itself guilty of the fact. If we should hazard an opinion in this case, we should say it was; and, if we are correct, is there not a suppression of the truth, when it is asserted that the different States have nothing to do with slavery as it may exist in any particular State, when it is known the United States have given the courts, both *state* and *national*, power over this subject, and made it their duty to protect the people in their life, liberty, &c. if they are called upon so to do? We leave those who have made the assertion to answer the question.

The next expression which is said to allude to the slave is contained in the third paragraph, 2d section, 4th article. It is in these words:

"No person, held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such labor or service may be due."

This sentence may have been, or may not have been, inserted in the Constitution, whether there had been any slaves in the country or not, so long as it was considered important to collect debts of

those who might leave their employers for different parts of the country; and, in one so extensive as this, it might have been done to the employer's detriment; and as, according to the general rule of nations, they do not give up their inhabitants to any other without special laws on the subject, it might have been thought necessary that a perfect understanding on this subject should be had among the States, and that those bound or held to service in any one State, if they should leave that service and flee into another, if claimed as those that were held, should be given up; but even then not until the party who claimed should prove the service or labor was due. It may be well to observe, that, in that article which provides for the apportionment of the representatives and direct taxes, "those bound to service" were to be reckoned among the freemen, and as equal to them in determining the number to be chosen, and the amount to be raised; that this class of people, in that day, was so numerous as to be taken notice of independent of those held as slaves. If "those bound to service" was meant to be in contradistinction to the "three fifths of all other persons," why may not this section allude to them? For ourselves, we perceive no intrinsic difference in the meaning of the two words "bound" and "held," when applied to those in servitude, saving that, in using the word "bound," there seems to be some obligation attached to both parties, while there appears to be none in the word "held." A person may hold a thing without his possessing any right for so

doing, and we believe this distinction was noticed at the time. But when the expression, "to whom such service or labor may be due," was added, it gave to the expression "held" all the meaning of the word "bound," or, otherwise, there can be no sense to the expression; consequently we should give the same meaning to both words. But, to say a slave owes any thing, we must give up the principle he is a slave, because, according to the laws of slavery, the slave cannot own any thing, and, consequently, cannot owe any thing: he is a thing; he owns and owes nothing. But, if it is said this paragraph was inserted in the Constitution in reference to slaves, we answer, we have no doubt those who held slaves attempted to introduce an article whereby they could reclaim any of their pretended (we say pretended) bondmen, let him flee to what part of the Union he might; but they were foiled in their attempt; they could not, in this instance, get the convention to grant them their wish. The person alone to whom service was owed was permitted to reclaim a runaway, even as we now permit a person to reclaim the service of any one who is bound or held as an apprentice, or had contracted for a certain amount of labor for a certain compensation; and that this language might and should be so construed, is somewhat evident by the similar language in the article alluded to above. We therefore think nothing in favor of slavery can be made out of this clause, according to the true principles of interpretation. It only shows how hard

some persons tried to mar the face of the Constitution without being able to succeed. And that this was the meaning intended to be attached to this phrase we think there can be no doubt; for it should be borne in mind that "Conditional servitude, under indentures and covenants, had from the first existed in Virginia. The servant stood to his master in the relation of debtor, bound to discharge the cost of emigration by the entire employment of his powers for the benefit of his creditor;"[1] and though there was more or less oppression under this system, and many Englishmen, Scotch, and Irish were sent here in opposition to their own wishes, yet they differed from slaves in the "duration of their servitude," and "the laws of the colony favored their enfranchisement."

It has been said the amendment that was made to this article goes to prove that slaves were meant, and that its bearing is now different from what it was as originally introduced; but we do not perceive it alters the force of the construction of the passage as we have given it; that is, that it was people that owed service, and not slaves, that were meant; and, if so, it explains the reason (and we cannot account for it on any other) why Franklin and his associates, who did all they could to oppose slavery, let this section pass without opposition. But it may be objected, as we have said, that the sentence "held to service or labor" has a different meaning from the expression "bound to service," and that the com-

[1] Bancroft's History of the United States, vol. i. p. 176.

mittee of revision made the alteration in the original article for the purpose of making the slaveholder more secure, and that their striking out the words "justly claiming" renders it more certain. But, when we consider the words "to whom such service or labor may be due" were added, they place the subject on its true basis, that is, of debt; and a debt cannot be contracted without the consent of both parties. Consequently they did not succeed in their wishes, though the slaveholder afterwards proceeded, and the magistrates in the free States very unjustly, as we think, have allowed them to pursue their unlawful and vile purposes, without ever bringing up this question of debt, — the very question on which their whole claim can constitutionally rest.

According to the Madison papers, Mr. Butler and Mr. Pinckney, from South Carolina, moved "that fugitive slaves and servants be delivered up like criminals:" this being objected to, Mr. Butler moved to insert the following: "If any person bound to service or labor in any of the United States shall escape into another State, he or she shall not be discharged from such labor or service in consequence of any regulation subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor; which was agreed to *nem. con.*"

But when the Constitution came to be revised, this resolution, besides the other amendments made to it, had the words "rightfully claiming" stricken out, and the words "on claim of the party

to whom such labor or service may be due" added; thereby, instead, as we have seen it asserted, of retaining the point of the original resolution, nullifying its effect when applied to one held in bondage against his own consent, and placing it, as it should have been placed, on account of debt: consequently, no man should be given up, unless the debt of service or labor is proved.

Section 4th of the same article has this expression:

"The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature or executive, (when the legislature cannot be convened,) against domestic violence."

A question here arises: what is a republican form of government? Its usual acceptation is, when the people make their own laws, through or by their representatives. The question recurs, then, is the colored man of this country represented, or can he be, in a slaveholding State, by conforming to any laws or rules the legislature of any of these States prescribes? We believe not; he, as we have said before, is considered a thing, and therefore is thrown without the pale of citizenship, and is under a most tyrannical government. He is denied this republican form of government, which the Constitution guarantees to him; and consequently the laws of these States, which impose these disabilities, are null, and should be of no effect. Let it not be said Greece and Rome held slaves, though they had a

republican form of government, and therefore it is competent for the American citizen to hold them, and yet continue their republicanism. To this we object, as those only, and their descendants, were slaves who were taken in war; they were made slaves rather than to destroy or imprison them; they were considered enemies to the state: the negro has never been a prisoner of war to this country, neither is he considered its enemy. But, after all, has the Christian American citizen no better model for his conduct and his mode of government than pagan Greece and Rome? We think he has, or ought to have.

Article 7 of the amendments: "In suits of common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of the common law."

Now, admitting a person can be held in slavery, if his value is considered above twenty dollars, he certainly, according to this article, should have his case tried by a jury, instead of being delivered up simply by a hearing before a magistrate, as has been universally the case when he has been claimed; which would be, if it was merely a question of dollars and cents, most clearly a violation of the Constitution, and which ought not to be suffered. How much more, then, ought it not to be suffered, when a man's liberty is involved!

This closes all, so far as we can conceive, that

has reference to, or has a bearing on, the subject of slavery in the Constitution; and we have already commented on the 4th, 5th, 8th, and 11th articles of the amendments; and we know not it is necessary, in this place, to say any thing more in regard to them. Mr. Alvan Stewart has very fully commented on the 5th article of the amendments, which can be seen by reference to the report of his argument on this subject before the legislature at Albany, N. Y. We will observe, however, one of these articles of amendments was introduced into the Massachusetts convention for the very purpose of having a bearing on slavery, as we shall hereafter show.

Upon a review then of this instrument, with these amendments, we cannot but come to the conclusion that each and every man in this country is by the Constitution free, and that, save only those who reside in the Indian Territories, each and every man is bound, individually and collectively, by this instrument, to protect each and all in their inalienable rights, there being no exception to any one, be he of what clime or origin he may: it is enough to say he is an inhabitant of the United States or its Territories, and that is sufficient to constitute him a freeman.

CHAPTER IV.

TO SUSTAIN THE ARGUMENTS MADE IN THE PREVIOUS CHAPTER, QUOTATIONS ARE MADE, SHOWING THE CHARACTER OF THE PEOPLE WHO CAME TO SETTLE THE COUNTRY.

HAVING now gone through with our criticisms on the Constitution, and our remarks upon what we consider the principles upon which it was founded, we now, for a further illustration, and to show our ideas are not wholly unsupported, propose to quote from the language of some of the men who discussed this document before its ratification by the people, to ascertain if they did not and must not have known how fully the subject of slavery was under the power of congress, or that of the courts.

We will, however, in the first place, adduce some testimony from the early history of the country, to throw light upon, and to exemplify, if possible, in a clearer manner the position we have taken; and, although some of the quotations apparently may not have a bearing upon the subject, yet they will all, we trust, serve to keep distinctly in mind the great principles of liberty, its value, and the steps taken by our fathers to secure it to the inhabitants of this country; and as we shall find they never, from the first moment, lost sight

of it previous to the adoption of the Constitution, so they did not do it at that time.

Mr. Bancroft, in his late History of the United States, observes, —

"Zemenes, (1537,) the gifted coadjutor of Ferdinand and Isabella, the stern grand inquisitor, the austere but ambitious Franciscan, saw in advance the danger which required centuries to reveal, and refused to sanction the introduction of negroes into Hispaniola, believing that the favorable climate would increase their numbers, and infallibly lead them to a successful revolt. A severe retribution has manifested his sagacity. Hayti, the first spot in America that received African slaves, was the first to set the example of African liberty."[1]

But "the rich returns made by Sir John Hawkins, of sugar, ginger, and pearls, for a cargo of Africans imported into Hispaniola, attracted the notice of queen Elizabeth,"[2] and "she became, in conjunction with her subjects," "at once a smuggler and a slave merchant;"[3] so that, while Sir John "bears the odious distinction of having first interested England in the slave-trade, and, by his success, induced his queen to continue the traffic, it may be some consolation to the people of England to reflect they are among the first to restore

[1] Bancroft's History of the United States, vol. i. p. 172.

[2] Bancroft's History, vol. i. p. 173.

[3] Is not queen Victoria, in conjunction with her ministers, a smuggler, and, conducting like queen Elizabeth, if not a slave merchant, something equally as bad, yea, worse, — a public poisoner of her fellow-men, in the attempt which she, in conjunction with them, is now making to introduce opium into China, against the laws of that country? We cannot but think they are making themselves obnoxious to both charges.

those rights which have been so long taken from the negro."

While England has been just, and has found, in her justice, she has not mistaken her true policy, may not Americans be so also? and, as the same author observes, "A ship of one Thomas Keyson and one James Smith, the latter a member of a church in Boston, first brought upon the colonies (1645) the guilt of participating in the traffic in African slaves," so may not the people of Boston take the lead in bringing about a reform, and help emancipate the descendants of those who were first brought into bondage by her citizens? and would it not seem right and proper that they should take a lively interest in the subject? One would think they should not be behind the people of that age, who denounced those who trafficked in slaves, and who called such "malefactors and murderers," and that they should act "as Richard Saltonstall, a worthy assistant, who felt himself moved, by his duty as a magistrate, to denounce the act of stealing negroes, as expressly contrary to the law of God and the law of the country." These guilty men were committed for the offence, and, after advice with the elders and representatives of the people, who, "bearing witness against the heinous crime of man-stealing," ordered the negroes to be restored, at the public charge, to their native country, with a letter expressing the indignation of the general court of their wrongs. And in 1652, when it was perceived "that the people of Warwick and Providence were disposed to buy" negroes, "to

hold them as slaves forever," "it was enacted they should not be so held;[1] but, at the end of ten years, they should be set free; and if any one sold them to be held as slaves a longer time, they should forfeit to the colony forty pounds, which was twice the value of the slave at that time."

After speaking of the law relating to marriages, he observes, —

"The benevolence of the early Puritans appears from other examples. Their thoughts were always fixed on posterity. Domestic discipline was highly valued; but, if the law was severe against the undutiful child, it was also severe against the faithless parent. The slave-trade was forbidden, under the penalty of death."

"The early laws did not permit any man to be kept in prison for debt, except when there was some appearance of some estate which the debtor would not produce. Even the brute creation was not forgotten; and cruelty towards animals was a civil offence. The sympathies of the colonists were wide; a regard for Protestant Germany is as old as emigration; and, during the thirty years' war, the whole people of New England held fasts and offered prayers for the success of their Saxon brethren."[2]

"When the executive council of state in England (1650) had granted to Mr. Coddington a commission for governing the island within the jurisdiction of Rhode Island, Mr. Williams, through the agency of Sir Henry Vane, got the commission vacated, and the town-meeting of Providence made him the following address: 'From the first beginning of Providence colony you have been a noble and true friend to an outcast and despised people.

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[1] Bancroft's History of the United States, vol. i. p. 173.

[2] Bancroft's History, vol. i. p. 466.

We have ever reaped the fruits of your constant loving-kindness and favor. We have long been free from the iron yoke of wolfish bishops. We have sitten dry from the blood spilt by the wars in our native country. We have not felt the new chains of Presbyterian tyrants; nor, in this colony, have we been consumed by the over-zealous fire of the (so called) godly Christian magistrate. We have not known what an excise means; we have almost forgotten what tithes are. We have long drunk of as great liberties as any people that we can hear of under the whole heavens. When we are gone, our posterity and children after us shall read in our town records your loving-kindness to us, and our real endeavor after peace and righteousness.' "[1]

Good foundation these for making a population to guarantee slavery!

Speaking of the population of Virginia, Mr. Bancroft remarks, —

"But the distinctions of society were more marked by the character of the plebeian population of Virginia. Many of them had reached the shores of Virginia as servants, doomed, according to the severe laws of that age, to a temporary servitude. Some of them even were convicts; but it must be remembered the crimes of which they were convicted were chiefly political. The number transported to Virginia for social crimes was never considerable, — scarcely enough to sustain the sentiment of pride in its scorn of the laboring population, certainly not enough to affect its character. Yet the division of society into two classes was strongly marked, in a degree unequaled in any northern colony, and unmitigated by public care for education. The system of common

[1] Bancroft's History of the United States, vol. i. p. 428.

schools was unknown. 'Every man,' says Sir William Berkley, in 1671, 'instructs his children according to his ability,' — a method which left the children of the ignorant to hopeless ignorance.

"The instincts of aristocracy dreaded the general diffusion of intelligence, and even the enfranchising influence of the preaching of the ministers. 'The ministers,' continues Sir William, in the spirit of the aristocracy of the Tudors, 'should pray oftener, and preach less. But I thank God there are no free schools nor printing; and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects, into the world, and printing has divulged them, and libels against the best government. God keep us from both.'"[1]

A wish many, we suspect, even in Virginia, begin to think has been brought too literally to pass. But Mr. Bancroft continues:

"Thus, in addition to the difficulties which the degraded castes of servants encountered in their endeavors to lift themselves into distinction, the power of the government was exerted to depress whole classes of society. We rightly abhor the envy which delights in debasing excellence; it is a still greater crime against humanity, to combine against the masses in their struggle for intellectual and social advancement.

"Still, servants were emancipated when their years of servitude were ended; and the law was designed to secure and hasten their enfranchisement."

"The facility of escape compelled humane treatment to white servants."

"Towards the negro, the laws were less tolerant. The statute which declares who were slaves followed

[1] Bancroft's History of the United States, vol. i. p. 191.

the old idea long prevalent through Christendom: 'All persons, not being Christians, imported into this country by shipping, shall be slaves.' Yet it was added, 'Conversion to the Christian faith does not make free.'"

In reading such passages, one can hardly help exclaiming, how little was, and even is, Christianity understood! But he says, —

"The early Anglo-Saxon rule interpreted every doubtful question in favor of liberty — declared the children of freemen to be free. Virginia was humane towards the white race — was severe towards the negro. Doubts arose if the offspring of an Englishman by a negro woman should be bond or free; and the rule of the Roman law prevailed over the Anglo-Saxon: the offspring followed the destiny of its mother."

A greater barbarity could not be inflicted, as we have some where else remarked. The passing of the children, by the ancient heathen nations, through fire, in the worship of Moloch, is not to be compared to it in iniquity.

"Enfranchisement of the colored population was not encouraged. The female slave was not subject to taxation; the emancipated negress was tithable." "The death of a slave was not accounted a felony, since it cannot be presumed [such is the language of the statute] 'that prepensed malice, which alone makes murder felony, should induce any man to destroy his own estate.' The legislator did not understand human passions. No such opinions now prevail. Finally, it was made lawful for 'persons pursuing fugitive colored slaves to wound or even to kill them;' 'the master

was absolute lord of the negro,' (1672.) 'After a long series of years the institution of slavery renewed a landed aristocracy, closely resembling the feudal nobility; the culminating point (1705) was when slaves were declared to be real estate, and (1725) might be constituted adscripts to the soil.'"

From these circumstances, Mr. Bancroft attributes the aspirations of the people of that State to the government of the country, and, from the developements that are now making every day, we may add, the anxiety now exhibited by our southern people to rule the land may be attributed to the same unhallowed source; and if the people of the North do not awake from that lethargy which seems to hang over a great portion of the people, the same causes that operated to create an aristocracy at the South will, before they are aware, bind them with fetters which will take more than a Hercules to sever; and this continent, instead of being what our fathers designed it — a home for the oppressed, and a dwelling-place for the free — will be but the prison-house for the slave and that of the lordly tyrant, where each will dread the other's presence, and that of ravening wolves will be the characteristic of its inhabitants.

In 1685, during the Monmouth rebellion, many of the convicts were sent to this country, and, "such was the demand for labor, convicts and laborers were regularly purchased and shipped to the colonies, where they were sold for indented servants: the courtiers round James II. exulted in

the rich harvest which the rebellion promised, and begged of the monarch frequent gifts of their condemned countrymen. Jeffers heard of the scramble, and indignantly addressed the king: 'I beseech your majesty, that I may inform your majesty that each prisoner will be worth ten pounds, if not fifteen pounds, apiece; and, sire, if your majesty orders as you have already designed, persons that have not suffered in the service will run away with the booty.' At length the spoils were distributed. They were in part persons of family and education, accustomed to elegance and ease. 'Take all care,' wrote the monarch, under the countersign of Sunderland, to the government in Virginia — 'take all care that they continue ten years, at least, and that they be not permitted in any manner to redeem themselves by money or otherwise, until that term be fully expired. Prepare a bill for the assembly of our colony with such clauses as shall be requisite for this purpose.' No Virginia legislature sanctioned such malice, and in December, 1689, the exiles were pardoned."

Perhaps it may be well to stop here and note there were, in Virginia at least, other bondmen beside negro slaves; and the fact of there being such men, and also those who had sold their time, and, consequently, who were indebted to the individual who had bought it, suggested to the minds of the framers of the Constitution the wording of the clause that relates to the running away of a person from service, and in strict language can be applied to none other. Whatever may have been

the intention of some, or however this language may have been construed since the Constitution has been adopted, the language cannot in any way be applied to the slave; for, as we have said before, he is a thing; he possesses and can possess nothing; consequently he cannot owe any thing; and that it was in view of these facts the clause was permitted to pass. Consequently, whether a slave was brought from the South to the North by his master, or came of his own accord, he could or should not be treated otherwise than as a freeman, possessing all the rights of a freeman, so long as he conducts himself with propriety, and has entered into no contract with his master for services to be rendered. These, however, are but the views of a private citizen, and they may be of little worth. *We*, however, should be inclined to treat the planter as the Jew of Venice was treated, and say to him, if a pound of flesh is really *owed* to you, take it, but do not spill a drop of blood; step not beyond the written language. We do not make use of this language in the spirit of caviling, or in a spirit of dishonesty, to get rid of the obligations that are properly imposed upon us, but would simply apply the language as it would be applied in its ordinary construction. We should not think it necessary to go out of our way to construe the language to favor the slaveholder, as we should have to do did we render it to comply with his wishes. Let us not be misunderstood. We do not advance the idea, that this clause of the Constitution was brought forward for the purpose of

securing the runaway apprentice, or the person who had sold his time; but, on the contrary, we do suppose it was advanced for the purpose of securing the runaway slave; but those who did not wish to be guilty of this crime, — of returning a slave to his master, — not only refused to entertain a direct proposition of the kind, but also an indirect one, and so amended the latter by adding the words "to whom such service or labor may be due," as effectually destroyed its character as a clause by which a runaway slave might be recovered.

In speaking of the settlement of New York, Mr. Bancroft says, —

"Thus did various nations of the Caucasian race assist in colonizing our central States. The African, also, had his portion of the Hudson. The West India Company, which sometimes transported Indian captives to the West Indies, having large establishments on the coast of Guinea, at an early day introduced negroes into Manhattan, and continued the negro slave-trade without remorse. We have seen Elizabeth of England a partner in the commerce, of which the Stuarts, to the day of Queen Anne, were distinguished partners: the city of Amsterdam did not blush to own shares in a slave-ship, to advance money for its outfits, and to participate in the returns. In proportion to population, New York had imported as many Africans as Virginia. That New York is not a slave State, like Carolina, is due to climate, and not to the humanity of its founders. Stuyvesant was instructed to use every exertion to promote the sale of negroes. They were imported sometimes by the way of the West Indies, often directly from Guinea, and were sold at public auction to the highest bidder. The average price was less than one hundred dollars. The

monopoly of the traffic was not strictly enforced, and a change of policy sometimes favored the export of negroes to the English colonies. The enfranchised negro might become a freeholder."

"With the African came the African institution of abject slavery; the large emigration from Connecticut engrafted on New Netherlands the Puritan idea of popular freedom," &c. "Their presence and their activity foretold a revolution." [1]

William Penn, in a letter to his wife on taking leave of his family, writes, "Live low and sparingly till my debts are paid," [2] though he wished no expense to be spared in the education of his children; for, by parsimony here, he considered all lost that was saved; but agriculture he proposed as their employment. "Let my children be husbands and housewives;" evidently meaning, whatever may have been his practices respecting the holding of slaves, that his children should depend upon themselves for their own support. It may be asked if William Penn thought all was lost that was saved in not instructing his children, what must have been lost to the country, if he was correct, by not instructing the children of the African? The sum, we think, would be more than twelve hundred millions of money; and who can doubt but it has been!

We have before quoted the remarks made by Mr. Haynes of the character of the people of South Carolina, and have also spoken of the inhabitants

[1] Bancroft's History of the United States, vol. ii. p. 303.
[2] Bancroft's History, vol. ii. p. 370.

of North Carolina, and it may not be necessary for us to go farther in our quotations, to show the nature of the population that came to these shores. Much might be brought from other sources, but we will make what we have quoted suffice. While slavery was introduced at an early age by the aristocracy, including kings and queens, and, like alcohol, served to intoxicate the people, and came very near making them forget the very nature of man, yet the love of liberty continued to increase and expand in this country, through all the various conflicts it had to maintain, till, finally, it burst out in our revolutionary struggle. The Declaration of Independence, as has been said, formed a new era in the history of mankind; all seemed to be impressed with the importance of liberty, and more confirmed in their views. Yet slavery existed, and what was to be done? Many, no doubt, were inclined to let it rest, and work out its own cure as best it might. Others, on the contrary, were anxious to have it expelled the land, sensible of the inconsistency which they as a people exhibited while these violations of man's rights continued. When first introduced, like spirituous drinks, few were sensible of the evils that might result; and, while the practice appealed to the selfish principle of our nature, many gave way to this feeling, and were willing to let future consequences take care of themselves.

It has been remarked, the first cargo of slaves ever brought into this country arrived in Virginia on the same day that the Pilgrims arrived on

the shores of Plymouth; and the Dutch captain who brought, could not find a market for them, and, upon his refusing to take them away, the people at last took pity at their forlorn situation, and giving a small compensation, received them to their houses. Hence arose that mighty evil that is now threatening destruction to our social institutions.

CHAPTER V.

THE PROCEEDINGS OF THE NATIONAL CONVENTION.

We now turn to the convention that formed the Constitution, and to the proceedings of the several State conventions, and also to some remarks taken from Mr. Wirt's life of Patrick Henry, and from the Federalist, all tending to show that, while our fathers came to this country for freedom, they meant to transmit this blessing to posterity; and that they did, for the most part, think they had attained this object, and that what they did not accomplish themselves, they left their children to perform. We will, however, observe, that, in these debates, it will be noticed there was a party who were for a strong government, and another party who were jealous for our State rights, and who feared a consolidated government. Whether those who wished for a strong government thought the people were really unable to take care of themselves, and, consequently, required the strong arm of the law to preserve the peace, &c. or, being conscious they meant, or wanted to produce, such a state of things as would make one portion of the community dependent on the other, and thereby create a jealousy and a distrust in the breast of different portions of society against each other,

making a powerful government necessary, we will not decide; perhaps both reasons entered into the breast of some, and determined them in their course of action. But, on the whole, a sincere desire is manifested to do what they thought was for the best good and interest of the country. It appears the members of the convention, from South Carolina and Georgia, were alone instructed on the subject of slavery; and it was through their influence the slave-trade was not immediately abolished, and, if we can judge, that any equivocal expressions on the subject of slavery were introduced into the Constitution. The Virginia delegates, in the first place, received instructions to use their exertions to have the trade abolished; but they were, for some reason or other, withdrawn.

South Carolina and Georgia, therefore, have the unenviable distinction of having been the cause of the continuance of slavery, or, rather, that there was no direct action of the convention on the subject. Since, then, having gained some points, they have taken advantage of these to effect their whole object, and they would now try to make us believe the whole government was made for them, and that they have a right to do with it as they think proper; and, by combining their action, they have been enabled to effect their purpose; and, while our government has been apparently a free one, it has, for the most part, been ruled by the slaveholder's influence. Hon. John Q. Adams has said every important question has been decided by

majorities less than the number of representatives on the floor of congress, in consequence of slaves being represented; and we have suspected he lost his election because he would not bend to the dictation of Georgia on the subject of her Indian difficulties, and that this was the cause of the expression, that "his administration must be put down, if as pure as the angels of light."

It has been often asked, how happens it slaveholders have always carried their point, when there has been a majority of members from the free States? The best solution, besides that the South have always been united on subjects that have affected their interest, while the North has been divided, was once given us by a lady; it was this: — The slaveholders, being an independent community by themselves, freed from the necessity of toil, each and all of them being masters, they could bear the utmost democracy; because, each being a lord, they wanted none higher than themselves. They could afford, so long as slavery existed, to be extremely democratic, because they would not be driven to labor. They had a class below them; they therefore could always appeal to the democratic feeling at the North, and get a true response; while those at the North possessing an aristocratic feeling, knew the principles they advocated were destructive to their interest, they, possessing no bondmen, and depending upon legislative enactments to maintain their dignity, constantly found themselves in opposition to the priv-

ileged class at the South: hence there has always been a division. But we trust our people are beginning to open their eyes to the nature of slavery, and, perceiving it has a tendency to reduce all the working classes to the same state, they will put forth their power, and check its pretensions, before it is so fastened on the country that they will be unable to break its chains; and, as far as in us lies, we would now warn them, if they do not lay aside the foolish prejudices they have against the colored race, and come forward, with united resolutions, to put an end to so iniquitous a system while it is now in their power, they must not complain if they themselves, or their children, should be brought under the same system of oppression. They must help free their brother man from the yoke, or else have it placed upon their own necks. We think this is evident, and that there is no alternative.[1] But to return to our extracts from the Secret Proceedings of the Convention that formed the Constitution of the United States, including some taken from a speech delivered by the Hon. Luther Martin before the legislature of the State of Maryland, who was called upon, after his return from the convention held in Philadelphia, 1787, by the legislature of that State, to give "an account of those transactions in which" he "had had a share." In this speech, Mr. Martin observes, —

[1] To bear us out in the supposition that some change of the kind has been anticipated, we can now appeal to the Inaugural Address of President Harrison.

"The delegates of Delaware were expressly instructed to agree to no system which should take away from the States an equality of suffrage, secured by the original articles of confederation." "The object of Virginia and other large States to increase their power and influence over others did not escape observation."[1]

A number of propositions, in the form of resolutions, were proposed to the convention for their consideration, as a basis on which to form a new government, and were submitted to a committee, who, among others, reported the following:

"7th. The right of suffrage in the first branch of the legislature ought *not* to be according to the rules of representation, namely, in proportion to the whole number of white and other free citizens, and inhabitants of every age, sex, and condition, including those *bound to service* for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State."

"16th. That a republican constitution, *and its existing laws*, ought to be guaranteed to each State by the United States."[2]

In discussing these among other propositions, it was argued the small States would not agree to representations founded on numbers; if they did they would be overwhelmed; "that slavery was the worst that could ensue, and we considered the system proposed the most complete, most abject system of slavery that the wit of man ever devised, under the pretension of framing a government for free States; that we never would submit to present certain evils in dread of a future, which might

[1] Secret Proceedings, p. 13. [2] Secret Proceedings, pp. 14 and 16.

be imaginary; that we were sensible the eyes of the country and of the world were upon us," &c.;[1] that, while they were willing to "*form a strong* and *energetic federal government*," they were opposed to consolidation, and they wished "the world at large" should "judge" who "*best understood* the rights of *freemen* and *free States*." They did not mean to give up the independency of the States, and give the large States a weight in the Union in proportion to the number of their inhabitants. The argument was, that each individual in the community, when he enters into society, independent of wealth, talent, or strength, had equal rights; and if, because of any of these distinctions, one should have "more votes than another, it would be *inconsistent with the freedom of that other*, and would reduce him to slavery;"[2] and consequently it would be the same with the States.

On that part of the Constitution which allowed the importation of slaves till the year 1808 there was much diversity of opinion, and the representatives from South Carolina and Georgia asserted that their States would never agree to a system that put it in the "power of the general government to prevent the importation of slaves, and that they, as delegates from those States, must withhold their assent from such a system."[3]

They had made this assertion because *eight* of

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[1] Secret Proceedings, p. 30. [2] Secret Proceedings, p. 24.
[3] Secret Proceedings, p. 63.

the States had decided they would not consent to have a general provision, as reported by the committee of detail, putting it out of the power of congress from ever prohibiting the importation of slaves, "without confining it to any particular period." Mr. Martin says they were willing to agree to this clause as it now stands, but the "same reasons which caused them to strike out the word '*national*,' and not admit the word '*stamps*,' influenced them here to guard against the word '*slaves*.' They anxiously sought to avoid the admission of expressions which might be '*odious*' to the ears of Americans, although they were willing to admit into their system those *things* which the *expressions* signified."[1] When, therefore, the convention had determined not to accept the report of the committee, three States only voting in favor of it, and the delegates from Georgia and South Carolina saying their States would not agree to a system that gave it in the power of the general government to put a stop to it, "A committee of one member from each State was chosen by ballot to take this part of the system under consideration, and to endeavor to agree upon some report, which would reconcile these States:" to this committee was also referred the following proposition, which had been reported by a committee of detail, to wit: "No navigation act shall be passed without the assent of two thirds of the members present in

[1] Secret Proceedings, p. 63.

each house,"[1] — a proposition which the "staple and commercial States" were solicitous to retain, lest their commerce should be placed too much under the power of the Eastern States, but which the latter were as anxious to reject. "This committee," of which Mr. Martin was one, "met and took under consideration the subjects committed to them." He says he "found the eastern members, notwithstanding their *aversion to slavery*, were very willing to indulge the Southern States at least with a *temporary* liberty to prosecute the *slave-trade*, provided the Southern States would, in their turn, gratify them by laying no restriction on navigation acts; and, after a very little time, the committee, by a great majority, agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time; and the restrictive clause relative to navigation acts was to be "omitted."

Here are some of the considerations of that compact of which we have heard so much; and, however disgraceful it might have been, let it be borne in mind the contract, so far as they are concerned, is fulfilled, the consideration has been paid, the pound of flesh was granted, and has been taken. But let us observe here, we consider this crying out compact as one of their *ruse*, of which the South has proved herself sufficient master, in order to frighten the North into her proposals, — not because she cares about the par-

[1] Secret Proceedings, p. 64.

ticular measures she proposes; but, wishing to prevent the mind of the North from taking into consideration the situation of the slave, and knowing the North is adverse to constant changes and fluctuations in her commercial pursuits, and that the South is not advancing in so rapid a manner in her improvements, in her jealousy she presses her undertaking, till she gains what she thinks is her object, and then some one steps in to make a compromise. We have seen so much of this we begin to grow tired and sick; and we trust the people of the North, if we are correct in our surmises, "will be able to stand in the evil day," and not bow down to every golden calf that may be set up.

But Mr. Martin goes on to observe, —

"This report was adopted by the convention, but not without considerable opposition. It was said we had just assumed a place among independent nations in consequence of our opposition to the attempts of Great Britain to *enslave us;* that this opposition was grounded upon the preservation of those rights to which God and nature had entitled us, not in *particular*, but in *common with all the rest of mankind;* that we had appealed to the Supreme Being for his assistance, as the God of freedom, who could not but approve our efforts to preserve the rights which he had thus imparted to his creatures; that now, when we had scarcely risen from our knees, from supplicating his mercy and protection in forming our government over a free people, a government formed pretendedly on the principles of liberty, and for its preservation, — in that government to have a provision, not only of putting out of its power to restrain

and prevent the slave-trade, even encouraging that most infamous traffic, by *giving the States* the power and influence in the Union in *proportion as they cruelly and wantonly sported with the rights of their fellow-creatures, ought to be considered as a solemn mockery of, and an insult to, that God whose protection we had thus implored, and could not fail to hold us up in detestation, and render us contemptible to every true friend of liberty in the world.* It was said that national crimes can only be, and frequently are, punished in this world by *national punishments*, and that the continuance of the slave-trade, and thus giving it a national character, sanction, and encouragement, ought to be considered as justly exposing us to the displeasure and vengeance of him who is equally the Lord of all, and who views with equal eye the poor *African slave* and his *American master!*

"It was urged that, by this system, we were giving the general government full and absolute power to regulate commerce, under which general power it would have a right to restrain, or totally prohibit, the slave-trade: it must, therefore, appear to the world *absurd* and *disgraceful* to the *last degree* that we should except from the exercise of that power the only branch of *commerce* which is unjustifiable in its *nature*, and contrary to the *rights* of *mankind*. That, on the contrary, we ought to prohibit expressly, in our Constitution, the further importation of slaves, and to authorize the general government, from time to time, to make such regulations as should be thought most advantageous for the *gradual abolition* of *slavery*, and the *emancipation* of the slaves already in the States.

"That slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of

the *equal rights* of *mankind*, and habituates to tyranny and oppression. It was further urged that, by this system of government, every State is to be protected both from foreign invasion and from domestic insurrections; and, from this consideration, it *was of the utmost importance* it should have the power to restrain the importation of slaves, since in proportion as the number of slaves increased in any State, in the same proportion is the State weakened and exposed to foreign invasion and domestic insurrection; and by so much less will it be able to protect itself against either, and therefore by so much, want aid from, and be a burden to, the Union.

"It was further said, that, in this system, as we were giving the general government power, under the idea of national character, or national interest, to regulate even our weights and measures, and have *prohibited* all *possibility* of emitting paper money, and passing insolvent laws, &c. it must appear still more extraordinary that we prohibited the government from interfering with the slave-trade, than which nothing could more affect our *national honor and interest.*

"These reasons influenced me, both in the committee and in the convention, most decidedly to oppose and vote against the clause, as it now makes part of the system." [1]

Mr. Martin thought by continuing the traffic "we should become *indifferent* to the *common rights of men*, and, as their own liberties were considered established, they had already become less sensible to these rights, and that in those States where the trade had already been prohibited, when they found that in their national character they

[1] Secret Proceedings, p. 64.

must 'share in its disgrace,' they would also wish to 'share in its benefits.'"

We will observe, here, if there was such an opposition to the continuance of the slave-trade for twenty years, when the Confederation had no control over it, and it was then in the power of each State to continue it to an indefinite extent, and this power was taken from them, and the whole subject was then placed, as is here intimated, in the power of congress, to put a stop to it in that time, and even a proposition to make preparation for the emancipation of the slaves already in the country, — can it be said that these men, or even a majority in the convention, went to work to guarantee its continued existence? No; the excuse was, there was a considerable property engaged in the trade, and more laborers were wanted at the South; and, by a mistaken policy, or a determined wickedness on the part of some, it was suffered to exist, in order that the one might be supplied, and the other have time to be withdrawn, and placed where it could be lucratively employed. No guaranty, we are assured, could have been obtained, or would have been given; and, if the members of the convention would have done it by any of their acts, we shall by and by see the people, by the recommendation of their conventions, and the action of congress, put a veto upon it; and it was urged, in one of these conventions, as a reason why the Constitution should be adopted, that it had given congress a power over the subject that was not possessed under the

Confederation. Without, however, stopping here to argue this point, we will leave the observations of Mr. Martin, and enter upon those made in the convention. We will, however, observe, there does not appear to be any thing reported to have been said on any of the articles that has special reference to slavery. Our quotations, therefore, must comprise those observations only that speak of the general object for which the government was formed. The report of the proceedings of the convention was made by Chief Justice Yates, of New York, for his own use, and was copied from his papers, after his death, by Mr. John Lansing, Jr. There were four propositions made for the consideration of the convention. Mr. Edmund Randolph, of Virginia, offered a series of resolutions as principles on which the Confederation might be amended. In his ideas of government, he would include freemen only. Mr. Charles Pinckney (S. C.) offered a draft of a federal government: in this draft there is no distinction made; the word "free" is not used before persons. In Mr. Patterson's (N. J.) resolutions it was; in Mr. Hamilton's (N. Y.) it was not.

Mr. C. Pinckney is reported to have said on the 4th resolve,—

"It will be necessary to inquire into the situation of the people of this country. Without this, we can have no adequate idea what kind of government will secure their rights and liberties. There is more equality of rank and fortune in America than in any other country under the sun; and this is likely to continue as long

as the unappropriated western lands remain unsettled. They are equal in rights, nor is the extreme of poverty to be seen in any part of the Union.[1]

From this situation he thought we could not draw any examples from the governments of Europe; and, there being so few men of fortune, they could not establish a nobility, and equality of others would not admit of the distinction; he therefore "laid it down as a settled principle, that equality of condition was a leading axiom in our government." He thought "commerce could never interfere with our government, nor give complexion to its councils." He thought we could not copy from Greece or Rome; "we differed from the whole. Our situation was unexampled; and it is in our power, on different grounds, to secure civil and religious liberty; and, when we secure these, we secure every thing that is necessary to establish happiness."

He thought "there might be three classes in this country: first, the professional men; second, the commercial men; third, the landed interest;" that the latter would be the governing power, and the other two would be dependent on them. He thought a national government would not suit them, and, consequently, there would be a mixed interest; and, in that view, there would "in fact be but one order." "Ours must be suitable to the people, and we were the only people who had sense enough to appoint delegates to establish a

[1] Secret Proceedings, p. 161.

general government, and he thought the proposition from Virginia would satisfy the people. But a general government must not be dependent on State government."

These observations are quoted, not because they all apply to the case in controversy, but to show that in them there is a continual looking forward to an equality of condition, for which they were aiming, and on which the government was to be founded.

Mr. Wilson observed, on the same section, that, —

"The magnitude of the subject was embarrassing; the great system of Henry IV. of France, aided by the greatest of statesmen, is small when compared to the fabric we are now about to erect. In laying the stone amiss we may injure the superstructure; and what would be the consequence if the corner-stone should be loosely placed? It is improper that the State legislature should have the power contemplated to be given them. A citizen of America should be considered in two points of view, — as a citizen of the general government, and as a citizen of the particular State in which he may reside. We ought to consider in what character he acts in forming a general government. I am both a citizen of Pennsylvania and of the United States. I must lay aside my *State connections*, *and act for the general good of the whole*. We must *forget* our *local habits* and attachments. The general government should not depend on State governments. That the powers of peace, war, treaties, coinage, and regulating commerce, ought to reside in that government. And, if we reason in this manner, we shall soon see the impropriety of admitting

the interference of State government into the general government. Equality of representation cannot be established, if the second branch is elected by State legislatures. When we are laying the foundation of a building which is to last for ages, and in which millions are interested, it ought to be well laid. If the national government does not act on State prejudices, State distinctions will be lost. I therefore move, that the second branch of the legislature of the national government be *elected* by *electors chosen* by the *people* of the *United States*." [1]

Much division prevailed on this point, and, as it will be perceived, the convention finally settled down upon the conclusion that the people, by districts in their several States, should choose their own representatives; making the government, if any thing, not quite so national as the proposition made by Mr. Wilson would have it, but yet much more so than by letting the legislatures of the State choose them.

Mr. Hamilton, while speaking of the senate, observed, —

"This question has been considered in several points of view. We are now *forming* a *republican government*. Real liberty is neither found in despotism, or the extreme of democracy, but in moderate government." [2] And, again, "*There can be no truer principle than this, — that every individual in the community at large has an equal right to the protection of government*." [3]

Mr. Madison, in speaking of the manner in which the different States should vote in con-

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[1] Secret Proceedings, p. 165. [2] Secret Proceedings, p. 171.
[3] Secret Proceedings, p. 186.

gress, said "he would exclude INCONSISTENT PRINCIPLES, in framing a system of government;"[1] it was difficult to get defects amended; and cited the case of Virginia and the Dutch as examples, both of whom found defects in their system of government, and it was with difficulty they had them removed. He observed, "If there was any real danger, he would give the smaller States the defensive weapons. But there is none from that quarter. The great danger to our general government is the great southern and northern interest of the continent being *opposed to each other. Look to the votes in congress, and most of them stand divided by the geography of the country, — not according to the size of the States.*" As it was then, so it is now, and must continue to be, till slavery shall be done away. This great statesman, from the commencement, saw the danger, and spoke of it. State lines, in the great controversies of the country, have been obliterated, and the great interests of our land have been decided independently of them. The slave States, ever true to themselves, have kept constant watch over their supposed interests, and have wielded the power they have possessed with such despotic sway, that they have almost tempted the North "to come out from among them, and be separate."

Mr. Yates and Mr. Lansing, members from New York, left the convention before it rose.[2] "They

[1] Secret Proceedings, p. 189.

[2] In their letter to Gov. Clinton, they give two reasons for returning: "1st. The limited and well-defined powers under which they acted, and which could not, on any possible construction, embrace

had uniformly opposed the system, and, I *believe*, despairing of getting a *proper one* brought forward, or of *rendering any real service*, they returned no more."[1]

The number of those who signed the Constitution as proposed was thirty-nine. Ten delegates never attended, and sixteen did not sign that instrument, among whom were Elbridge Gerry and Caleb Strong, of Massachusetts. Rhode Island sent no delegates.

General Washington, in his letter addressed to the president of congress, in submitting the constitution the convention had adopted, in his concluding remarks, says, "That it may promote the lasting welfare of the country so dear to us all, and secure her freedom and happiness, is our most ardent wish."[2] Has that wish been realized? Have the three million of slaves now in the country received any benefit arising from that instrument? None whatever; but daily, hourly, are we departing from the principles he here expressed; and our land, instead of becoming an abode of freedom and of happiness, is but the habitation of slavery and misery to a good portion of her population: thousands are groaning in their chains, and tens of thousands are bewailing their condition. They hear the exultation of freedom and of happiness;

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an idea of such magnitude as to assent to a general constitution, in subversion to that of the State. 2d. A conviction of the impracticability of establishing a general government, pervading every part of the United States, and extending essential benefits to *all*."

[1] Secret Proceedings, p. 36. [2] Secret Proceedings, p. 267.

but it passes them by: placed like Tantalus of old, the refreshing water of liberty rises to their lips, but they are never able to drink of its refreshing stream; and, unless some come to their relief, they must, for succeeding ages, die in their distress, without being able to say, "I was hungry, and ye gave me meat; I was thirsty, and ye gave me drink; naked, and ye clothed me; sick, and in prison, and ye visited me." But we trust they will not long have to make this complaint, but that the South, as well as the North, will, when they become sensible of the cruelties the South is practising, be induced to render to her citizens that justice they have a right to demand, and which she ought to give; and we shall find, when the word *liberty* is expressed in any of our public meetings, it will not be considered out of place, or any portion of the hearers manifest signs of discomfiture, as if its sound grated on their ears.

In giving the above extracts from the Secret Proceedings of the Convention, it will be observed there does not appear to be any thing on which we could at once make up a judgment. The observations of Mr. Martin explain more fully the inducements which actuated the different members than can be gathered from the debates; but, from what are given to the public, — and we believe we have given all that was said directly upon the subject of slavery, either on the one side or on the other, — we cannot but deduce the idea that *liberty* was to be the basis on which the government was to be founded. If other ideas were

advanced or insinuated, none dared openly to express them; and we have only to regret they have been expressed louder than a whisper since, and that it has been thought necessary to calculate the value of the Union, or, in other words, to establish an aristocracy upon the ruins of democracy, which must inevitably be the case, if slavery be much longer continued.

Mr. Edmund Randolph, in a letter addressed to the house of delegates of Virginia, upon the subject of adopting the Constitution, says, in speaking of the equality of suffrage, &c. —

"I hope Virginia will be seconded by a majority of the States. I hope she will be seconded, first, in causing all *ambiguities* to be precisely explained; then in preventing the eligibility of the president, — of his power of nominating the judiciary, and filling vacancies during the recess of congress; and, second, in taking from him the power of pardoning treason, in drawing the line between the powers of congress and of the individual States, in abridging the power of the senate, in incapacitating congress in determining their own salaries," and "in limiting and defining the judiciary power."

Whether he saw, in any of the powers he wished to restrain, any that would bear on the peculiar institutions of the South, or whether he thought them detrimental to liberty in *general*, we are not able to say; but this we think he might have seen in the powers given to the judiciary, — a power sufficient to curb the South in her prosecuting the slave system; and if he did, and was at all anxious this system should be continued, there were sufficient reasons for his anxiety on the subject.

CHAPTER VI.

QUOTATIONS FROM THE FEDERALIST.

We have now passed over the Secret Proceedings of the Convention, which recommended the Constitution to congress, and, through it, to the several States. We have seen, in some measure, the anxiety that was felt that a Constitution should be adopted, the objections made, the influence that slavery exerted, and the attempt made to incorporate it into that instrument, and the manner that attempt was frustrated. This, together with the struggle between the large States and small ones, independently of the slavery question, was almost the only point that produced any protracted discussion, and prevented any decision at once of the kind of government to be adopted. On the part of some, a confederation of the States was urged, and these desired the old Confederation should be amended; while those of the larger States wanted to have a weight in the government proportioned to their population: this, after long and laborious discussion, was settled by a compromise.

The framing of the language of the Constitution, in those parts that are said to relate to slavery, and have been acted on as such, show what care

was used, and what exertions were made, by those who were opposed to the obnoxious practice of holding slaves, to prevent this practice, as a system, being incorporated in the body politic. However great the exertions to the contrary, unless a complete and entire perversion of the meaning of words is made, saving in the instance where the "three fifths of all other persons" was named, (which may have, or may not have, any meaning at all,) no person could make the language apply to slaves; and, being so, we must suppose the friends of freedom gained the day, expecting, though the South might not give up their slaves immediately, they would yet so do in a short time. And, although there was no *express* provision in the Constitution as reported, that would give the slave his rights, yet, if the purposes for which it was adopted, as expressed in its caption, should be truly carried into effect, slavery would be destroyed by them.

We will now make a few quotations from the Federalist. This book, it is well known, was written by Mr. Hamilton, and Mr. Madison, for the purpose of recommending and explaining the Constitution that had been proposed to the people of this country for its adoption. It was published in successive numbers over the signature of Publius, in the newspapers of that day, and afterward they were collected and put into a volume, having the above title prefixed.

They were written in concert by the gentlemen named above, who took upon themselves to answer

the objections that were made to the Constitution, on its being published to the world, with their attempt to do away any wrong impressions that might be entertained respecting its object, and the purposes that induced the convention to promulgate it. They undoubedly had much influence at the time to satisfy the American people of the good intentions of those who framed it, and the advantages that might be expected to result from its being carried into execution.

Great fear was expressed throughout the country that liberty would be endangered, and powerful objections, on that account, were brought against its adoption. Consequently, great anxiety was felt by its friends that all the real objections against it should be answered, and that it should be made at least to appear as perfect as possible. These gentlemen, therefore, undertook its defence, and the various conventions that were called were undoubtedly more or less influenced in their decisions by these writings. These gentlemen stood high in the affections of the people, and much confidence was placed in their judgment.

In these papers, we shall find they asserted that the foundation principle of this government was liberty; that it was for the security of this that they proposed this system of government. They believed liberty could not be secured without there being a power some where, sufficiently great to keep in check any outbreak arising from the ambition of individuals, or the turbulence of the multitude, or attacks from external foes. Whether

right in these ideas or not, these were the expressed reasons given why a government for the whole country, arising directly from the people, independent of, and in some measure dependent on, the State governments, should be adopted.

Some of the States, particularly Rhode Island, had not fulfilled their engagements, or answered to the requisitions made upon them: there was no power to coerce them, and they refrained from making good the obligations that the country, at that time, was under, and they feared what might be the result if such a state of things continued. Whether these fears were well founded, or not, is another question; but such were expressed, and such, undoubtedly, many entertained. They therefore exerted themselves to establish a government that would have the power to coerce that justice which would not be rendered without coercion, and that security to individuals in their lawful and peaceful occupations which might be liable to be interrupted by lawless and ambitious men, and to secure them from that rapacity which seemed to be the governing policy of many of the European nations.

As this country might be expected to have extended commercial relations, it was thought necessary they should be prepared for such exigencies as might arise in those relations; and, in alluding to this last consideration, Mr. Hamilton remarks respecting the memorable struggle for superiority between the rival houses of Austria and Bourbon, and between England and Holland

for mastery of the seas, where the wars were urged on by the people against the wishes of the actual government. Speaking of the wars between England and France, he says, —

"The wars between these two last mentioned nations have, in a great measure, grown out of commercial considerations; the desire of supplanting, and the fear of being supplanted, either in particular branches of traffic, or in the general advantages of trade and navigation, and, sometimes, even the more *culpable desire of sharing in the commerce of others without their consent.*"[1]

After speaking of the distracted state of the Grecian and Roman republics, he cites the arguments which the advocates of despotism have drawn, not only against the forms of republican government, but against the very principles of civil liberty. He says,—

"Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted their gloomy sophisms. And *I trust* America will be the broad and solid foundation of other edifices not less magnificent, which will be permanent monuments of their error."[2]

The question may be asked here, what is the basis of liberty of which Mr. Hamilton speaks? Does it consist simply in having a representative government, where laws can be made by the people through their representatives, without any regard at all to the nature of those laws? Does he mean that when the representatives get to-

[1] Federalist, p. 31. [2] Federalist, p. 45.

gether they may make laws enslaving each and every individual who has contributed to place them in power, or any other people, who have had no hand in placing them there? and that the liberty of which he speaks consists only in preventing foreigners from having any control over their dominions? and that, while they may lay ruthless hands on such individuals as they may choose, and make them even plantation slaves, to satisfy their lust for power, they must say to the powers afar off, "presume not to come near, — touch not mine anointed, — think not of invading our territory, our rights of government, for, if you do, we will bring the whole forces of our government to bear against you?" Are these the purposes of government? Are these the purposes for which the government of the United States was formed? Or was it not rather that the *individual*, in his private relations, in his every-day employments, in his search after wealth, happiness, religion, should be secure in his person? should have the whole power of the state put in requisition to save him from having his rights encroached upon, either by any other individual, by the government, or by foreign powers? Was not this, is not this, the whole object of this government? Is not this the basis, the proper, the only basis, on which the civil liberty of the state can rest? Is there any other foundation? If the individual is not to be defended in his lawful employments, wherein lays his security; wherein has he any civil rights? If he encroaches not on the peace and rights of

others, is he not to receive the protection of the state? Is he not to look to it to guard him from foes around? If not so, of what use is the *habeas corpus?* of what use are our courts of justice? of what avail is all our apparatus to carry on our internal police? If we rightly judge, it is for the protection of the *individual*, and that for his protection all just governments are formed, whether danger arises from external or internal foes; and, if he is not protected, either the government is founded in fraud, or it is of no use. And if it was not for the protection of the individual, and the better to secure the advantages of the combined action of all the people of the country, to secure to each and every individual those inalienable rights which we as a community avowed when we established our independence, then was this government founded in fraud, let the declaration of the individuals who proposed and advocated it be what it may. But, until it can be proved that any class of people was excluded, we must suppose a majority of our people included all within our borders who were to receive protection from the state.

Mr. Madison, speaking of the objection drawn from the extent of the country, and that the people did not blindly follow any other nation in their form of government, but were ready to adopt such measures as "their own good sense, and the knowledge of their situation, and the lessons of their own experience, taught them," said,—

"Happily for America, happily, we trust, for the *whole human race*, they pursued a new and more noble

course. They accomplished a revolution which has no parallel in the annals of human society. They reared the fabric of governments which have no model on the face of the globe. They formed the design of a great confederacy, which it is *incumbent* on their successors to *improve* and *perpetuate*. If their works betray imperfections, we wonder at the fewness of them. If they erred most in the structure of the Union, this was the work most difficult to be executed; this is the work which has been new-modeled by the act of your convention, and it is that act on which you are now to deliberate and to decide." [1]

Mr. Hamilton, speaking of the defects in the Confederation, in relation to the principle of legislation for the States in their collective capacity, after alluding to the dangers that might arise to them by "rivalship," "intrigues of foreign nations," &c. said, —

"But, if we are unwilling to be placed in this perilous situation, if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our *plan those ingredients* which may be considered as characteristic difference between a *league* and a *government;* we must extend the authority of the union to the *persons* of the *citizens*, — *the only proper* objects of government." [2]

Mr. Madison, speaking of the conformity of the plan to republican principles, observes, —

"The first question that offers itself is, whether the general form and aspect of the government is strictly

[1] Federalist, p. 77.

[2] Federalist, p. 82.

republican? It is evident, no other form would be reconcilable with the genius of the people of America, with the *fundamental principles of the Revolution*, or with that *honorable determination* which animated every votary of freedom to rest all of our political experiments on the *capacity* of *mankind* for self-government. If the plan of the convention, therefore, be found to depart from the republican character, its advocates must abandon it as no longer defensible."[1]

After asking the question, what is a republican government? and alluding to a number of governments which were called republics, but were not really so in fact, he said, —

"It is essential to such a government, that it be derived from the great body of society, — not from any inconsiderable proportion, or a *favored class of it;* otherwise, a *handful of tyrannical nobles*, exercising their oppression by a delegation of their powers, might aspire to the *rank of republicans*, and *claim for their government the honorable title of republic;*" and that "it is sufficient for such a government, that the persons administering be appointed, either by the people or their representatives; and that they hold their offices, either during pleasure, for a limited time, or during good behavior."

He then compares the standard here set up, and he thinks it conforms to it.

Speaking of the powers with which the Union would be invested, he says, —

"It were doubtless to be wished that the power to prohibit the importation of slaves had not been postponed until the year 1808, or rather that it had not been suf-

[1] Federalist, p. 210.

fered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered a *great point gained* in favor of humanity, that a period of twenty years may terminate forever, within these States, a *traffic* which has so *long and loudly upbraided the barbarism of modern policy;* that within that period it will receive a *considerable discouragement from the federal government*, and may be totally abolished by a concurrence of the few States which continue the unnatural traffic, in the *prohibitory example which has been given by so great a majority of the Union.* Happy would it be for the unfortunate Africans, if an equal prospect lay before them of being redeemed from the *oppression of their European brethren.*"[1]

This, probably, is Mr. Madison's real view of slavery and its attendant trade. What he may have afterwards said in the convention of Virginia, we should be rather inclined to think, arose from the fear of what might be the political effect, if he laid open to view, in too palpable a manner, the effect that the Constitution might have on the system of slavery, when he found so much opposition of a certain class of the delegates in that convention. For we find that he here supposed that, in the prohibitory steps taken by so great a majority of the people of the Union, the few States — that is, Georgia and South Carolina — would finally acquiesce in those steps, and that he supposed it would be happy for the Africans, if they

[1] Federalist, p. 235.

had an equal prospect before them of being redeemed from the oppression of their European brethren. Remember that, in the destruction of the slave-trade, it was generally thought slavery would cease; and, if it could be wholly stopped, it undoubtedly would. What, then, we ask, must be Mr. Madison's idea of guaranteeing the perpetual continuance of slavery to the South? It is evident he never entertained the thought. He undoubtedly supposed it would die a natural death, when the trade ceased.

Speaking of the rule of naturalization, he says,—

"The dissimilarity of the rules of the several States has long been remembered as a fault in our system, and as laying a foundation for intricate and delicate questions. In the fourth article of the Confederation, it is declared 'that the *free inhabitants* of each of these States — paupers, vagabonds, and fugitives from justice excepted — shall be entitled to all privileges and immunities of *free citizens* in the several States; and the people of each State shall, in every other, enjoy all the privileges of trade and commerce,' &c. There is a confusion of language here which is *remarkable*. Why the term *free inhabitants* is used in one part of the article, *free citizens* in another, and *people* in another, or what was meant by superadding to 'all privileges and immunities of free citizens,' all the privileges of trade and commerce, cannot easily be determined."[1]

But he says it seems to be an unavoidable conclusion, that the free inhabitants of one State shall enjoy all the privileges of a free citizen in another.

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[1] Federalist, p. 239.

But, as different States have different laws of naturalization, there might be a confusion; and it was owing to mere casualty there had not been; and, to remedy any evil that might result from such expressions, congress very properly had the power to introduce "uniform rules of naturalization; while the right that our citizens had to go into any of the States was continued, and the word '*free*' before the word '*citizen*' was stricken out;" — another evidence that slavery, so far from its being guaranteed, was meant to be destroyed.

The same subject of the powers of congress being continued, he said, —

"In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against *aristocratic or monarchical innovations. The more intimate such a union may be, the greater interest have the members in the political constitutions of each other, and a greater right to insist that the forms of government under which the compact was entered into should be substantially maintained.*"[1]

This is different language from that held by the editor of the Boston Quarterly Review, when he says, because the abolitionists have taken an interest in the welfare of the slave, and would attempt to make the practices of the people of this country conform to their professions, and fulfil their obligations to the world, being themselves implicated in this nefarious business, their action

[1] Federalist, 244.

should be considered as a declaration of war.[1] We think the editor and Mr. Madison do not agree on the right of interference. Neither do we think this language conforms to the ideas thrown out by Mr. Webster in his speech delivered in Richmond, Virginia, Oct. 1840, in which he says, "I hold, by the Constitution of the United States, that congress is absolutely precluded from interfering in any manner, directly or indirectly, with the institution of slavery, or with any other State institution." Again he repeats, "There is no power, either in congress or the general government, in the slightest degree, to interfere with the institution of domestic slavery!" Neither does it agree with the language held by President Harrison, in his inaugural address, on the subject of the members of one State interfering with the internal policy of another. For Mr. Madison continues:

"But a right implies a remedy; and where else could a remedy be deposited by the Constitution? Governments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort than those of a kindred nature. 'As the Confederate Republic of Germany,' says Montesquieu, 'consists of free cities and petty states, subject to different princes, experience shows us that is more perfect than that of Holland and Switzerland.' 'Greece was undone,' he adds, 'as soon as the king of Macedon obtained a seat in the amphictions.' In the latter case, no doubt, the disproportionate force, as well as the monarchical form of the new Confederate, had its share of influence on the events."

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[1] Boston Quarterly Review, vol. i. p. 489.

"It may possibly be asked what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves. These questions admit of ready answers. If the *interposition* of the general government shall not be needed, the provision for such an event will be a harmless superfluity only in the Constitution. But who can say what experiments may be *produced* by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? To the second question it may be answered, that, if the general government should interpose in virtue of this constitutional authority, it will be, of course, to pursue the authority."

Speaking of the rule adopted for the ratio of representation and taxation, that they would both, in view of congress, depend upon numbers, he observes, —

"All this is admitted, it will perhaps be said; but does it follow, from the admission of numbers for the measure of representation, or of slaves combined with free citizens as a ratio of taxation, that slaves ought to be included in the numerical rule of representation? Slaves are considered as property, not as persons. They ought, therefore, to be comprehended in estimation of taxation, which are founded on property, and to be excluded from representation, which is regulated by a census of persons. This is the objection, as I understand it, stated in its full force. I shall be equally as candid in stating the reasoning which may be offered on the opposite side."

"We subscribe to the doctrine, might one of our southern brethren observe, that representation relates more immediately to persons, and taxation more immediately to property; and we join in the application of this

distinction in the case of our slaves. But we must deny the fact that slaves are merely considered as property, and in no respects whatever as persons. The true state of the case is, that they partake of both of these qualities; they being considered by our laws in some respects as persons, and in other respects as property. In being compelled to labor, not for himself, but for a master; in being vendable by one master to another master; and being subject, at all times, of being restrained in his liberty, and chastised in his body, by the capricious will of another, — the slave may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty, and in being punishable himself for all violence committed against others, the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with *great propriety* on the case of our slaves, when it views them in the mixed character of persons and of property. This is, in fact, their true character; it is the character bestowed on them by the laws under which they live, and it will not be denied that these are the proper criterion, because it is only under the pretext, that the laws have transferred the negroes into subjects of property, that a place is disputed them in the computation of numbers; and it is admitted, that, if the laws were to restore the rights which have been taken away, the negroes could no longer be refused an equal share of representation with the other inhabitants."[1]

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[1] Federalist, p. 306.

In answer to an objection made, that, in the exposition of the Constitution, the federal government would follow the example of the States which held slaves, where the slaves neither voted nor increased the votes of their masters, which, if done, all of the slaves would be represented, it will be perceived he places it in the power of the different States to arrange the right of suffrage as they see fit; and, consequently, the moment the slave is freed he may at once have a right to a full representation, — an evidence it was expected such would be the case; for he says, —

"It is a fundamental principle of the proposed Constitution, that, as the aggregate number of representatives allotted to the several States is to be determined by a federal rule, founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised by such parts of the inhabitants as the State itself may designate. The qualifications on which the right of suffrage depend are not, perhaps, the same in any two States. In some of the States the difference is very material. In every State a certain proportion of the inhabitants are deprived of this right by the Constitution of the State, who will be included in the census by which the federal Constitution apportions the representatives. In this point of view, the Southern States might retort the complaint, by insisting that the principle laid down by the convention required that no regard should be had to the policy of particular States towards their own inhabitants, and, consequently, the slaves, as inhabitants, should have been admitted into the census according to their full number, in like manner with other inhabitants, who, by

the policy of other States, are not admitted to all the rights of citizens. A rigid adherence to this principle is waived by those who would be gainers by it.

"All they ask is, an equal moderation be shown on the other side. Let the case of the slave be considered, as it is in truth, a peculiar one. Let the compromising expedient of the Constitution be mutually adopted, which regards them as inhabitants, but as debased by servitude below the equal level of free inhabitants,—which regards the *slave* as the fifth of the *man*."[1]

He then goes on and takes another ground to justify the convention. In the ratio of representatives they considered that property should be represented. "Government is instituted no less for the protection of property than of the persons of individuals." The one as well as the other, therefore, may be considered as represented by those who have charge of the government; and, consequently, he infers from this circumstance that the southern person would conclude that the property of the slaveholder should be represented in the manner it was proposed, as he adds,— "Such is the reasoning which an advocate for the southern interest might employ on this subject; and, although it may appear a little *strained* in some *points*, yet, on the whole, I must confess it fully reconciles me to the scale of representation which the convention has established."

Mark, in these expressions of Mr. Madison's, he speaks of the southern man's arguments, not his own; and that the whole of the arguments results

[1] Federalist, p. 307.

in this, — that when the master wants to maltreat the slave, then he is property; but when the slave maltreats his master, then he is a person; and when taxation and representation are to be considered, he is neither one thing nor another, a sort of hermaphrodite, — he is three fifths of a man. Natural history gives no account of such an animal; he is a sort of being conjured up, just about that time, in the brain of some wiseacres. If there had been any record in history of any new animal created since the first formation of the world, we might suppose the slave was a sort of new creation, a being unique in his kind, — as a south-western man would say, — a sort of half horse, half alligator; though, perhaps, no touch of the snapping turtle, or he might have been considered one of the descendants of the centaurs of old, — half horse, half man, and, consequently, he must be treated as such. We must, on the whole, confess that, while Mr. Madison appears very ingenious in this chapter, his reasoning is very weak. Patrick Henry's analysis of the proposed Constitution might very well apply here. It would seem Mr. Madison was very easily reconciled, provided the Constitution should be established, though he had observed there should be no contradictory principles embodied in the instrument.

The amendments to the Constitution, however, as it will be our object to prove, put at rest this reasoning, and has, or should have, restored the slave, ere this, to his rights. We think, on the whole, Mr. Madison — not only here, but in other

places — tries to blind his own eyes and that of others to the real nature of the consequences which would naturally result on the adoption of the Constitution with regard to the slave.

In speaking of the house of representatives, in relation to the supposed tendency of the plan of the convention to elevate the few above the many, he remarks,—

"If it be asked, what is to restrain the house of representatives from making legal discriminations in favor of themselves, and a *particular class of society*? I answer, the *genius* of the *whole system*, the nature of *just* and *constitutional laws*, and, above all, the vigilant and *manly* spirit which actuates the people of America, — a spirit which nourishes freedom, and, in return, is nourished by it.

"If this spirit should ever be so debased as to tolerate a law not obligatory on the legislature, as well as on the people, the people will be prepared to tolerate any thing but liberty."

We will ask here, if, in the new position which the South has now taken on the subject of slavery, it is a blessing, and not an evil; that it must and should be sustained by laws, thereby constituting two distinct classes of society, one favored, and the other treated with contumely; is it not just the state of society of which Mr. Madison speaks? and if the American people sanction it, will they not tolerate any thing "but liberty?" and have we not already had a foretaste of what may be expected, if slavery is much longer continued, in the lynchings and burnings, gaggings

and rifling post-offices, refusing petitions by congress, &c. &c. ? These things cast a shadow before not to be misunderstood, and we think this view of the subject completely puts to rest the ideas expressed in the previous quotation, and shows what a baseless foundation Mr. Madison had there to stand upon.

Respecting the power of the Courts.

Mr. Hamilton, in speaking of the judicial department, makes the following observations :

"Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from the imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged, that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all of the American constitutions, a brief discussion of the grounds on which it rests may not be unexceptionable.

"There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal, that the servant is above his master, that the representatives of the people are superior to the people themselves, that mere actions, by virtue of powers, may do not only what their powers do not authorize, but what they forbid.

"If it be said that the legislative body are the constitutional judges of their own powers, and that the construc-

tion they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, when it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the *courts* were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It must therefore belong to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable *variance* between the *two*, that which has the superior obligation and validity ought, of course, to be preferred: in other words, the Constitution ought to be preferred to the statute; the intention of the people to the intention of their agents.

"Nor does the conclusion, by any means, suppose a superiority of the judicial to the legislative power. It only supposes the power of the people is superior to both; and that, when the will of the legislature, declared in the statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those that are not fundamental."[1]

"But, in regard to the interfering acts of a superior and subordinate authority, of original derivating power,

[1] Federalist, p. 434.

the nature and reason of the thing indicate the course of that rule as proper to be followed. They teach us that a prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that, accordingly, whenever a particular statute contravenes the Constitution, it will be the *duty* of the judicial tribunals to adhere to the latter, and disregard the former."[1]

In answer to an objection made to the above construction of the powers of the Supreme Court, he adds, —

"In the first place, there is not a syllable in the plan which *directly* empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them greater latitude in this respect than may be claimed by the courts of every State. I admit, however, the Constitution ought to be the standard of construction for the laws; and, whenever there is an evident opposition, the laws ought to give place to the Constitution. But this doctrine is not deducible from any circumstance peculiar to the plan of the convention, but from the general theory of a limited constitution; and, as far as it is true, is equally applicable to most, if not all, of the State governments. There can be no objection, therefore, on this account, to the federal judicature, which will not be against the local judicatures in general, and which will not serve to condemn every constitution that attempts to set bounds to legislative discretion."[2]

"It may be esteemed the *basis* of the Union, that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.' And, if it be a just principle, that every government ought to

[1] Federalist, p. 436.

[2] *Idem*, p. 450.

possess the means of executing its own provisions by its own authority, it will follow that, in order to the inviolable maintenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State and its citizens."[1]

"After having discussed and laid down the principles which ought to regulate the Constitution of the federal judiciary, we will proceed to test, by these principles, the particulars of which, according to the plan of the convention, it is to be composed:

"First, to 'all cases in *law* and *equity*, *arising under the Constitution* and the laws of the United States.' It has been asked, what is meant by 'cases arising under the Constitution,' in contradistinction to those arising under the laws of the United States? The difference has already been explained. *All the restrictions* upon the *authority* of the *State legislatures* furnish examples. They are not, for instance, to emit paper money; but the interdiction results from the *Constitution*,[2] and will have no connection with any law of the United States. Should paper money, notwithstanding, be emitted, the controversies concerning it would be cases arising under the Constitution, and not under the laws of the United States, in the ordinary signification of those terms. This may serve as a sample of the whole.

"It may also be asked, what need of the word 'equity?' What equitable causes can grow out of the Constitution and the laws of the United States? There is

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[1] Federalist, p. 415.

[2] A question may here be asked: If the States may not issue paper money under the Constitution, can they authorize an agent to do it? in other words, can they grant a charter to a bank, agreeably to this provision of the Constitution?

hardly a subject of litigation between individuals which may not involve those ingredients of *fraud*, *accident*, *trust*, or *hardship*, which would render the matter an object of equitable rather than legal jurisdiction, as the distinction is known and established in several of the States. It is the peculiar province, for instance, of a court of equity, to relieve against what may be called *hard bargains*. There are contracts in which, though there may have been no direct fraud or deceit, sufficient to invalidate them in a court of law, yet there may have been some undue and unconscionable advantage taken of the necessities or misfortune of one of the parties, which a court of equity would not tolerate. In such cases, when foreigners were concerned on either side, it would be impossible for the federal judicatures to do justice without an equitable as well as legal jurisdiction."[1]

In the foregoing quotations, we think it must be apparent to every one, that, in Mr. Hamilton's opinion, the court held the rights of every individual in their keeping, and that, when appealed to, they would, in duty bound, be obliged to see him protected against all claims or authority over his inalienable rights, or even rights which are not inalienable; and, if wronged or oppressed, either by individuals or a State, the power of the court was sufficiently great to overrule their acts, and restore the man to his just rights. For, if they have jurisdiction in case of hard bargains, we would ask what harder bargain can there be, than that a man and all his posterity should be sold into slavery, even if the man consented, under peculiar

[1] Federalist, p. 447.

difficulties, to his own sale, and afterwards repents? would not the court have jurisdiction? If Mr. Hamilton is correct in the above observations, we think they would. How much more, then, should the court have jurisdiction, when the slave, in opposition to all his entreaties, is sold, and in various ways maltreated in the most shameful manner! If the courts have jurisdiction in any case where the individual rights are concerned, we know of none which so loudly calls for their interference as that of the slave; and we sincerely trust the slave will call upon them for that interference.

On general subjects.

Mr. Hamilton, in answer to an objection that the convention did not adopt a bill of rights, remarks, —

"There remains but one other view of this matter to conclude the point. The truth is, after all the declamation we have heard, the Constitution is itself, in every rational sense, and to every useful purpose, *a bill of rights.* The several bills of rights in Great Britain form its Constitution; and, conversely, the Constitution of each State is its bill of rights. In like manner, the proposed Constitution, if adopted, will be the *bill of rights for the Union.* Is it one object of a bill of rights to declare and specify the political privileges of the citizen in the structure and administration of the government? This is done in the most simple and precise manner in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the *State* Constitutions. Is another object of a bill of rights to define certain immunities and modes of pro-

ceeding, which are *relative to personal or private concerns?* This we have seen has been attended to in a *variety of cases*, in the same plan. Adverting, therefore, to the substantial meaning of a bill of rights, it is absurd to allege that it is not found in the work of the convention." [1]

After answering the objection, that it does not go far enough, he adds,—

"Whence it must be apparent that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign to the substance of the thing."

Among the final reasons for adopting the Constitution, Mr. Hamilton adds, —

"The additional securities to republican governments, to liberty, and to property, to be derived from the adoption of the plan, consists chiefly in the restraints which the preservation of the Union will impose upon local factions and insurrections, and upon that ambition of powerful individuals in single States, who might acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities of foreign intrigue, which the dissolution of the confederacy would incite and facilitate; in the prevention of *extensive military establishments*, which could not fail to grow out of wars between the States in a disunited situation; in an express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precaution against the repetition of those practices, on the part of the State governments, which

[1] Federalist, p. 481.

have undermined the foundation of property and credit, have planted mutual distrust in the breast of all classes of citizens, and have occasioned an almost universal prostration of morals."

From this it appears the conclusive reasons for adopting the Constitution, and the ones which were to cap the climax, were, the States were incapable of defending the individual's rights; they had not power to repel foreign invasions, or overcome the influences which ambitious men might obtain in a single State, or to check the outbreaks of the populace, or to overcome the jealousies that might arise between different States, and which would have a tendency to increase the military, and thereby endanger the good of society, its peace and happiness.

CHAPTER VII.

EXTRACTS, ETC. FROM THE PROCEEDINGS IN THE CONVENTION OF THE STATE OF MASSACHUSETTS.

We will now enter upon the discussion had in the several conventions of the States, which were called to take into consideration the subject of adopting the Constitution as promulgated by the convention at Philadelphia, premising, however, the Constitution as adopted was an entirely different thing from what was anticipated by the generality of the people at large: they expected an improvement of the Confederation, not a new system of government, as the Constitution proposed.

In the debates on the Constitution in the convention of Massachusetts, Mr. King said, in the discussion of the third paragraph, 2d section, article 1st, — "three fifths of all other persons:"

"These persons meant slaves. By this rule is representation and taxation to be apportioned. And it was adopted because it was the language of all America. [That is, that representation and taxation should go together; the greater the representation, the greater the taxation.] According to the Confederation, ratified in 1781, the sums for the general welfare and defence should be apportioned according to the surveyed lands, and improvements thereon in the several States. But

it had never been in the power of congress to follow that rule, the returns from the several States being so very imperfect."[1]

On a question being asked by Mr. Widgery, "if a boy of six years of age was to be considered a freeman,"[2] Mr. King answered, —

"All persons born free were to be considered freemen; and, to make the idea of *taxation* by *numbers* more intelligible, said five negro children of South Carolina are to pay as much tax as the three governors of New Hampshire, Massachusetts, and Connecticut."[3]

"Judge Dana asked, 'Can that land flourish like this which is cultivated by the hands of freemen? and are not three of these independent freemen of more real advantage to the State than five of those poor slaves?'"[4]

"Mr. Nason remarked, 'Mr. King ought to have gone further, and have said three of our children in the cradle are to be rated as high as five of the working negroes of Virginia, and it will then appear that this State will pay as great a tax for three children in the cradle as any of the Southern States for five hearty, working negroes; and, as it was hinted we had made a bad bargain before, we ought to make a better one now.'"[5]

"Mr. Dawes observed, the colored people of the Southern States must be considered as slaves or freemen; if the former, and consequently as so much property, why should it not be wholly represented? but our own laws and Constitution consider blacks as freemen, and so, also, does our own natural justice. If, then, as freemen, they ought to be wholly represented. In either view, he could

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[1] Elliot's Reports, vol. i. p. 56.
[2] *Idem*, vol. i. p. 57.
[3] *Idem*, vol. i. p. 57.
[4] *Idem*, vol. i. p. 58.
[5] *Idem*, vol. i. p. 58.

not see that northern men would suffer, but directly the contrary. He thought, however, that the passage ought to be considered in the convention with that other portion of the Constitution, that prohibits the slave-trade in 1808, and that it was *left* to the *option* of *all the States* to totally prohibit the introduction of slaves into any of the States; and he asked, what could the convention do more? The members of the Southern States, like ourselves, had their *prejudices*. It would not do to abolish slavery by an act of congress in a *moment*, and so destroy what our southern brethren considered as property. But we may say, that although slavery is not smitten by an apoplexy, yet it has received a mortal wound, and *will die of consumption*."[1]

Messrs. King, Gore, and Parsons spoke of the *advantage* to the *Northern States* the apportionment of taxes gave them; as also the Hon. Judge Dana, who, in concluding his remarks, observed, — "I would rather be annihilated than to give my voice for, or sign my name to, a Constitution which, in the least, would betray the liberties or interest of my country."[2]

It may, perhaps, be well to remark here, though we have before entered pretty largely on this question, how completely the southern people have thrown off the advantage which our northern statesmen thought they had gained over the south by this system of taxation. Finding, as undoubtedly they must have done, how onerous it would be to pay a direct tax on each of their slaves, they immediately took advantage of the disposi-

[1] Elliot's Reports, vol. i. p. 60. [2] *Idem*, vol. i. p. 63.

tion manifested at the North to raise a revenue on imports. The mechanics [1] of the North wishing to have their labor protected, and the South wishing to get rid of this direct tax, both succeeded in their wishes, and consequently a tariff on foreign articles was adopted. By this step, though opposed by much of the intelligence of the North, the South, in consequence of the small quantity of foreign products used by her slaves, has thrown a good portion of the expenses of the government upon the non-slaveholding States. The grand bargain made by our accomplished statesman has, in the end, like all such bargains, turned out but a sorry affair; and we, their children, have not much to boast of their acuteness in such matters, unless we have the charity to suppose they intended it should bear with such weight upon the holders of slaves the masters would be glad to let them go; and, if so, we have only to regret they were not holden to their bargain. We would also have the observations made by Mr. Dawes remembered, particularly when he speaks of the power of congress: "It would not do to abolish slavery by an act of congress in a *moment*." But to return:

"Mr. Widgery insisted we had a right to be jealous of our rulers, who ought never to have power they could abuse;" [2] and in another place observed, "He hoped the gentleman would not think hard of it if we, ignorant men, cannot see as clear as he does. The

[1] See proceedings of a meeting held in the Green Dragon, Boston, just before the sitting of the convention.

[2] Elliot's Reports, vol. i. p. 49.

strong must bear the infirmities of the weak; and it must be a weak mind indeed that could throw such illiberal reflections against gentlemen of education as the honorable gentleman complains of. To return to the paragraph: If congress," continued Mr. W. "have this power of taxing directly, it will be in their power to enact a poll tax. Can gentlemen tell why they will not oppose it, and by this means make the poor pay as much as the rich?" [1]

"Mr. Fuller was at a loss to tell how taxation and representation went hand in hand, when the requisition made on Massachusetts was *thirteen* times as great as that made on Georgia, when she sent eight representatives, and Georgia but three, [the question was asked Mr. Gerry.] Mr. Gerry answered, Georgia had increased its numbers by immigration; and if it had not then, it soon would have, enough to entitle it to the portion assigned her." [2]

"Mr. Varnum said the States of New Hampshire and Massachusetts, for two or three years, had in the field *half* of the continental army under Gen. Washington, and he thought, therefore, congress should have the power of laying taxes, in order to make the different States pay their proportion." [3]

"Mr. Widgery was opposed to the Constitution: his arguments were, — the Confederation was well enough, and he was not afraid of foreign enemies."

"Mr. Neal went over the ground of objections to this section, on the idea the slave-trade was allowed to be continued for twenty years. His *profession*, he said, *obliged* him to bear witness *against any thing* that should favor the making merchandise of the bodies of

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[1] Elliot's Reports, vol. i. p. 63. [2] *Idem*, vol. i. p. 64.
[3] *Idem*, vol. i. p. 92.

men; and, unless his objection was *removed*, he *could not put his hand to the Constitution.* Other gentlemen said, in addition to this idea, that there was not even a proposition that the colored man should ever be free, and Gen. Thompson exclaimed, 'Mr. President, shall it be said, after we have established our own independence and freedom, we make slaves of others? O! Washington,[1] what a name he has had! How he has immortalized himself! but he holds those in slavery who have as good a right to be free as he has; he is still for self, and, in my opinion, his character has sunk fifty per cent.'" [2]

"On the other side, it was said that the step taken in this article *towards* the *abolition* of *slavery* was one of the *beauties* of the *Constitution.* They observed that, in the Confederation, there was no provision whatever for its being abolished; but this Constitution provides that congress may, after twenty years, totally annihilate the slave-trade, and that all the States except two had passed laws to this effect. It might reasonably be expected it would be done. In the interim all the States were at liberty to prohibit it."

"The debate of this ninth section, as the reporter observed, continued desultory, and consisted of similar objections and answers thereto as had been before used. BOTH SIDES deprecated the slave-trade in the most *pointed terms.* On one side it was pathetically lamented by Mr. Nason, Major Lash, Mr. Neal, and others, that this Constitution provided for the continuance of the slave-trade for twenty years. On the other, the Hon. *Judge Dana*, Mr. *Adams*, and others, *rejoiced* that a door was now opened for the *annihilation* of this *odious* and abhorrent practice in a certain time."

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[1] It must be remembered Washington, at his death, gave freedom to his slaves.

[2] Elliot's Reports, vol i. p. 117.

"Mr. Heath observed he had been absent, and had not heard the remarks that had been made. But the paragraph respecting the migration and importation of such persons as any of the States *now existing* shall think proper to admit, &c. is one of those considered during my absence, and I have heard nothing on the subject, save what has been mentioned this morning; but I think the gentlemen who have spoken have carried the matter rather too far on both sides. I apprehend it is not in our power to do any thing for or against those who are in slavery in the Southern States. *No gentleman within these walls detests every idea of slavery more than I do. It is generally detested by the people of this Commonwealth; and I ardently hope the time will soon come when our brethren of the Southern States will view it as we do, and put a stop to it;* but to this we have no right to compel them. Two questions naturally arise, if we ratify this Constitution: *Shall we do any thing, by our acts, to hold the blacks in slavery? or shall we become partakers in other men's sins?*. I think neither of them: each State is sovereign and independent in a *certain* degree, and they have a right and will regulate their own internal affairs as to themselves appears proper; and shall we refuse to eat or drink, or be united, with those who do not think or act as we do? Surely not. We are not, in this case, partakers of other men's sins; *for in nothing* do we *voluntarily encourage* the slavery of our fellow-men. A restriction is laid on the federal government, which could not be avoided, and a union take place. The federal convention went as far as they could; the migration and importation is confined to the States *now existing only*. New States cannot claim it. Congress, by their ordinance for creating new States, some time since declared that the new States shall be *republican*, and that there shall be *no slavery in them*.

But whether those in the Southern States will be emancipated after the year 1808 I do not pretend to determine; I rather doubt it."[1]

Questions might here arise, — whether, if slaves could be held in the old States, under the Constitution, with Mr. Heath's understanding of the matter, they could be so held in the States that have been admitted since the Union was formed; whether it is in the power of congress to grant to these new States the liberty of receiving slaves within their borders by immigration; also, whether the republican character that congress has guaranteed to each State, to which Mr. Heath alludes, would not also forbid slaves from being retained even in any State.

After the Constitution had been discussed by paragraphs, and the whole brought up to be adopted, —

"Mr. Neal rose and said, that, as the Constitution at large was now under consideration, he would just remark, that the article which respected the Africans was the one that laid on his mind; *and, unless his objection to that was removed, it must, however much he liked the other parts of the Constitution, be a sufficient reason for him to give his negative to it.*"[2]

"Mr. Heath remarked, we are soon to decide on a system of government, digested, not for the people of the Commonwealth of Massachusetts only, not for the present people of the United States only, but, in addition to these, all those States that may hereafter arise into existence within the jurisdiction of the United States, and for mil-

[1] Elliot's Reports, vol. i. p. 123. [2] *Idem*, vol. i. p. 127.

lions yet unborn, — a system of government, not for a *nation of slaves*, but for a people as free and as virtuous as any on earth; not for a conquered nation, subdued to our will, but for a people who have fought, who have bled, and who have conquered — who, under the smiles of Heaven, have established their independence and sovereignty, and have taken equal rank among the nations of the earth."[1]

After other observations, he says, —

"But I have observed, from the first, that many gentlemen are opposed to the system; and this, I apprehend, arises from their objections to some particular parts of it. Is there not a way their minds may be relieved from embarrassment? I think there is; and I think no exertion should be spared in endeavoring to do it. He therefore recommended that the first representatives to congress be requested to exert their endeavors to have such *checks* and *guards* provided as appear to be necessary in some of the paragraphs of the Constitution. Communicate what we judge proper to our sister States, and request their concurrence: is there not the highest probability every thing we *wish may be effectually secured?* He thought there was; and the gentlemen of the convention would have their difficulties under which they labored *removed*."

Mr. Bowdoin, in the course of his observations, remarked, —

"From hence it follows that all the governments of the States ought to be of the same nature — of the republican kind; and that the general government ought to be an assemblage of the spirit and principles of them all."[2]

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[1] Elliot's Reports, vol. i. p. 128. [2] *Idem*, vol. i. p. 133.

The following is an abstract of the amendments introduced by the president, Mr. Hancock, in order to induce the different members of the convention to give their sanction to the instrument:

1st. It is explicitly declared that all powers, not expressly delegated to congress, are reserved to the several States, to be by them exercised.

This was considered by Mr. Adams as a summary of a bill of rights.

The 3d amendment proposed was to quiet the apprehension of those who thought congress held too much power over elections.

4th. Congress cannot lay direct taxes, except when the money arising from imposts and excises shall be insufficient for the public exigencies, &c.

The 6th was to introduce the indictment by the grand jury, before any person should be tried for crime, before he should incur any infamous punishment, or loss of life.

The 8th recommends a trial by jury in civil actions between citizens of different States.[1]

There were nine amendments finally adopted.

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[1] These amendments were in the hand-writing, as we have understood by a gentleman [1] who attended all the sittings of that convention, of Mr. James Sullivan. The same gentleman also remarked that there was a great deal of exertion made to keep the convention in ignorance of the real bearing that the Constitution, as reported, might have on the system of slavery; and he remarked, with emphasis, that, if that convention had had the least idea that slavery would have been supported by it, the Constitution would have been rejected in three days. This same gentleman, who had taken a very active part in favor of the Constitution, observed that it was generally supposed, by the principal men, that the South would soon perceive that slavery was a dark spot on her escutcheon,

1 Benjamin Russell, Esq.

"These amendments met the concurrence of Mr. Adams, and he thought they would be generally

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and that they would, of their own accord, soon abolish it. He, though not a member of the convention, thought a rejection would be the case; and it required, as he said, a great deal of management to bring about the consent of the delegates of the convention to the Constitution. It had become well known, before the meeting of the convention, that Mr. Hancock and Samuel Adams were opposed to it. The merchants and those in favor of it in the city of Boston, calculating upon the *humanity* of these gentlemen, and that they might be operated upon by causes which would be likely to influence them, got up a large meeting of the mechanics of the town, who held their meeting at the tavern called the Green Dragon. The house was filled to overflowing; and the street, and all the avenues about the house, were crowded with people. He, as secretary of the meeting, read a series of resolutions, that had been prepared by Mr. Christopher Gore, amended, as he said, by the committee who were appointed by the meeting to bring in resolutions, in order to make them appear more *mechanical;* as they were rather too refined, as they supposed, for such a meeting to adopt. They were read to the meeting inside of the house, and they adopted them by acclamation: they were then read to the people outside, and they also received them with enthusiasm. When Mr. Samuel Adams heard of the meeting the next day, and what they had done, he was much surprised, and could hardly believe there were many of the mechanics in attendance, until he was assured of the fact by Mr. Revere, the chairman of the meeting, who was a mechanic and a great friend of Mr. Adams. (Our Boston folk have not yet forgotten how to carry a point, when they have determined upon it!)

After it had been ascertained that there was a majority in the convention who would vote in favor of the Constitution, the citizens waited upon Mr. Hancock, who had been confined during the sittings of the convention by sickness, took him in a carriage, and, as it was said, about five hundred persons drew him to the hall of the convention; and he had the honor of coming forward as a conciliator, and presenting to the meeting the amendments that had been prepared. It will be perceived they were written with a great deal of care, but ostensibly, and as asserted in the convention, to secure the rights and liberties of *all*. With, then, the countenance of Mr. Hancock, and the assent of Mr. Adams, with the

acceptable, and meet the objections that had been made."[1]

"Mr. Strong thought the amendments proposed would meet the several objections made."[2]

"Mr. Thompson observed, he could not say amen to the amendments; he thought they might be voted for by *some Indians*."[3]

"Mr. Widgery did not see the probability these amendments would be made, if we had the authority to propose them. He considered the convention did not meet for the purpose of recommending amendments, but to adopt or reject the Constitution. He concluded by asking whether it was probable that those States that had already adopted the Constitution would be likely to submit to amendments."[4]

"Judge Dana advocated the amendments. He said they were not of a *local* nature, but extended to *every part* of the *Union;* and he thought two thirds of congress, or two thirds of the conventions of the States, would adopt them."[5]

"Gen. Thompson said, we have no right to make amendments; it was not the business for which we were sent. He was glad that gentlemen were convinced it was not a perfect system, and that it wanted amendments: this, he said, was different from the language

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assurance that their delegates in congress should press these amendments till they should become a part of the Constitution, and in consequence of the State being then, as now, one of the most influential in the Union, her suggestions would have their weight, and would probably be adopted: with these assurances, the convention, as will be perceived, concluded to adopt the instrument; and those who finally voted against it said they would cease their opposition.

[1] Elliot's Reports, vol. i. p. 131.
[2] *Idem*, vol. i. p. 145.
[3] *Idem*, vol. i. p. 145.
[4] *Idem*, vol. i. p. 146.
[5] *Idem*, vol. i. p. 143.

they had formerly held. However, as to the amendments, he could not say amen to them; but they may be voted for by some men — he did not say *Indians*."

"Major Lash, turning from the amendments, entered largely into the consideration of the 9th section, and, in the most pathetic and feeling manner, described the misery of the poor natives of Africa who are kidnapped and sold for slaves. With the brightest colors he painted their happiness and ease on their native shores, and contrasted them with their wretched, miserable, and unhappy condition in the state of slavery."[1]

"Rev. Mr. Backus spoke in favor of the Constitution, because he thought by its adoption it would be a means of destroying slavery."[2]

"Dr. Jarvis repels the charge, that these amendments have been artfully introduced to lead to a decision that would not otherwise be had. Without stopping to remark upon the total want of candor in which such an idea has arisen, let us inquire whether there is even an appearance of a reason to support this insinuation. The propositions are annexed, it is true, to the ratification, but the assent is complete and absolute without them. It is not possible it can be otherwise understood by a single member of this honorable body. Gentlemen, therefore, when they make such an unfair observation, do no honor to the sagacity of others. The propositions are *general*, not *local;* they are not calculated for the peculiar interest of *this State*, but, with indiscriminate justice, *comprehend* the *circumstances* of the INDIVIDUAL on the *banks* of the *Savannah*, as well as the *hardy* and *industrious husbandman* on the *margin of the Kennebec.* Why, then, they should not be *adopted*, I confess I *cannot conceive.* He thought other States would adopt

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[1] Elliot's Reports, vol. i. p. 152. [2] *Idem*, vol i. p. 152.

them; that Massachusetts had her influence; and, as they did away many objections that had been made, they would be annexed to the ratification; and, if they would not be immediately adopted by the influence of her delegation, they might ultimately be." [1]

We will stop here to remark how pointed and distinct is this language: that the amendments proposed, that should have a bearing upon the condition of the slave, were not done in a sly and clandestine manner, as had been insinuated; that they were not made for deception, or that it was intended to blind the eyes of any; but they were so plain all would understand them, and that they meant them to apply to the slave in Georgia as well as to the freeman in Maine; and it must be presumed the South so understood it. It could not be supposed their intellectual vision would be so abtuse as not to see their bearings; and, consequently, if they should be adopted, the slave would be secure in his personal rights, and could not be punished but after a conviction of a crime by a jury, and then not to receive any "cruel or unusual punishment;" and, as the amendments that were finally adopted by congress not only included these, with few alterations, but others more definite and distinct than the ones passed by this convention, — such, for instance, in the latter clauses of the 1st article of the amendments, where "the freedom of speech and of the press," and "the right of the *people* peaceably to assemble, and to petition government for redress of

[1] Elliot's Reports, vol. i. p. 156.

grievances;" also the 4th article, where "the right of the *people* to be secure," &c. is asserted; also a portion of the 5th, 6th, and 7th articles, where the rights of the *people* are guaranteed to them, — the people of Massachusetts felt somewhat satisfied that justice would at length be done to the negro, and that she ceased for a time pressing his claim. For we think it will be perceived every slaveholder has, and does, make himself liable, under these amendments, to be prosecuted before our courts of law every time he presumes to whip or punish a slave without a "process of law," stating wherein his fellow-man has injured him; and then he should not take the law into his own hands; for this, we think, was the intention and meaning of the amendments passed by the convention of Massachusetts.

"Mr. Ames said the amendments appeared satisfactory, and he approved the Constitution with the *amendments*. One gentleman, who was distinguished for his zealous opposition, has declared he 'would uphold both hands if they could be adopted.'"[1]

"The only question which seems to labor, is this: the amendments are not a part of the Constitution, and there is nothing better than a probability they will be adopted. The nature of the debate is totally shifted, and the inquiry now is, not what the Constitution is, but what degree of probability there is that the amendments will be incorporated into it."

He then went on to consider the objections that had been made.

Mr. Burrill, of York, spoke in favor of the Consti-

[1] Elliot's Reports, vol. i. p. 157.

tution *only* as the prospect was that the amendments, from the representation of the delegates, would be adopted; otherwise he had strong objections from the fear of its destroying the liberties of the country.[1]

"Mr. Parsons demonstrated the impossibility of forming a bill of rights in a national constitution for securing individual rights, and showed the inutility of the measure, from the idea *no power was given to congress to infringe on any one of the natural rights* of the people by this Constitution; and, should they attempt it, without constitutional authority, this act would be a *nullity*, and could not be ENFORCED."[2]

We will here ask if congress, that power which was made the supreme, could not infringe upon any of the natural rights of the people, and all such acts, if attempted, would be at once a "nullity," could it be, or can it be, in the power of the States to do it? Can the States have a greater control over the individual, the lesser power, than congress, the greater? We must certainly answer in the negative. The States cannot have a greater control over the individual than congress; perhaps, with certain modifications, they may exercise a control, but it must be in conformity to the principles of the Constitution; and if congress cannot interfere with the *natural* rights of the individual, neither can the State, nor the individual of a State. The individual has never given these rights away, and, as the Declaration of Independence says, never can; they are inalienable. How can the individual but be secure under our

[1] Elliot's Reports, vol. i. p. 161. [2] *Idem*, vol. i. p. 164.

Constitution if its provisions be properly carried into effect? As Judge Parsons may be considered good authority in this case, we must suppose the individual, wherever situated, and of whatever complexion, has these natural rights, of which he cannot by any laws be deprived; and if they are taken away it cannot be considered lawful; and, consequently, any claim over these rights must be a "nullity," being in opposition to natural justice and our Constitution.

"Mr. Stillman was in favor of the Constitution without the amendments, *only* as he thought it sufficiently guaranteed the liberties of the people."

Hon. Mr. Turner made an excellent speech in favor of the Constitution with the amendments.[1]

Mr. Symms, who had opposed the Constitution as it was, but who was desirous one should be adopted, observed, —

"When his excellency the president came forward, as became his high office, in the character of a mediator, a ray of hope shot in upon the gloom that overspread his heart,— of hope that we should still be united in the grand decision! Speaking of the amendments, he said, — Our committee, sir, are pretty well agreed as to the amendments necessary to be made; and, in their report, it appears that these amendments are equally beneficial to ALL of the citizens of America. *There is nothing local in them.* Shall we then totally reject the Constitution because we are only morally certain they will be adopted? Shall we choose certain misery in one way, when we have the best human prospect of enjoying our most sanguine wishes in another? God forbid!"[2]

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[1] Elliot's Reports, vol. i. p. 171. [2] *Idem*, vol. i. p. 173.

He concluded his speech by saying, —

"He withdrew his opposition from the consciousness that the amendments would be adopted. That from the known influence that Massachusetts held in the nation, and that they would be the standing instructions of the delegates in congress to urge their adoption, he concluded there would be no doubt of their ultimate success; and, consequently, by withdrawing his opposition, and conceiving the utmost need there was for a constitution for the country, he felt himself acquitted by his own conscience; he hoped and trusted he should be by his constituents, and [laying his hand on his breast] I know I shall before God."

The time having arrived for taking the question, as to the adoption of the Constitution, the president made a short address. Among other things, he said, —

"I should consider it one of the most distressing misfortunes of my life to be deprived of giving my aid and support to a system which, if *amended* (and I feel assured it will be) according to your proposals, cannot fail to give the people of the United States a greater degree of political freedom, and, eventually, as much national dignity, as falls to the lot of any nation on earth."

After the vote had been taken, 187 yeas, 168 nays, most of those gentlemen who had opposed its adoption stated they should not continue their opposition, but should, as they had been fairly beaten, give in their adhesion, hoping it might prove the blessing that its advocates thought it would produce.

The convention closed its proceedings by saying, —

"That, in acknowledging, with grateful hearts, the goodness of the Supreme Ruler of the universe, in affording the people of the United States, in the course of his providence, an opportunity deliberately and peaceably, without fraud or surprise, of entering into an explicit and solemn compact with each other, by assenting to and ratifying a new Constitution, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, DO, in the name, and in behalf, of the people of the Commonwealth of Massachusetts, assent to and ratify the said Constitution for the United States of America."[1]

After so much had been said in the convention of Massachusetts, it may be thought surprising the amendments were not more pointed and distinct on the subject of slavery; and, because they were not, it must be presumed General Thompson expressed himself as indignantly as he did. Yet, if the principles they embodied should be carried out — and no doubt it was hoped and expected they would be—and as the amendments actually adopted were more distinct, there can be no reason to suppose but those amendments should be applied in the broadest sense, and be considered as having, if not exclusively, certainly a distinct reference to the condition of the slave. In the great anxiety to have a Constitution by a good portion of the

[1] Elliot's Reports, vol. i. p. 176.

people of Massachusetts, and particularly among the leading men of those times, and fearing the consequences if they did not succeed, we may suppose they might be as guarded as they dare be, lest they might destroy a fabric which, as they all declared, they meant should be a palladium for the general liberties of the country.

Mr. Dawes was the only one, so far as is reported, who made any allusion to the prejudice that was then existing against the colored race: he seems to acknowledge that the South, as well as the North, possessed it; and that was the reason why the three fifths representation was adopted. All the others were either silent on the subject, or else spoke in decided terms of the iniquity of slavery, and the abhorrence with which they viewed the whole subject. But they all seemed to think that the stopping of the slave-trade would consummate the overthrow of slavery; and it was against that they mostly directed their remarks, thinking, if that traffic was made to cease, slavery would cease with it.

In reviewing these interesting proceedings, we cannot but remark the firmness and love of liberty which, with perhaps few exceptions, displayed itself in all of the observations of the men composing this convention, nor help remarking the determined opposition, to the very last, made to slavery and its continuance and the impossibility of having a constitution adopted at all, without the almost positive assurance that such provisions, in the form of amendments, should be made as

would prevent the personal tyranny practised in a State where slavery existed; and although scarce one in the whole convention, so far as the debates are reported, but appeared anxious for a constitution, and that there should be one similar to the one before them, yet we find, on account of the obnoxious paragraphs, which might be construed as having relation to the colored man, there was but nineteen majority in its favor, and many of these said they should vote in its favor simply on the ground that the amendments which the convention proposed would be adopted. And, as we find, these, with others securing the rights of the individual in a distinct manner, were adopted. Where, we ask, is the vaunted declaration, that the Constitution guarantees slavery? Where, even, is the compact? The facts are, though South Carolina and Georgia, together with a few slaveholders out of these States, and Virginia and North Carolina, afterwards attempted, in their several State conventions, to force the acknowledgement of slavery on the Union, the other States would not agree to it; but, on the contrary, caused such amendments to be made as to give equal rights to all, as one member of this convention said, to those on the banks of the Savannah as well as to those on the margin of the Kennebec; and now, whether Georgia or South Carolina agreed to these amendments or not, so long as they agreed two thirds of the States could make amendments, and have remained in the Union after they were adopted, it cannot be otherwise

supposed than that they have placed themselves under all the liabilities which that instrument, with its amendments, impose. It cannot be supposed these States were not aware of the nature of these amendments, nor how far they would extend. The debates of Massachusetts were known to them; they knew the ground she took, and we see no reason why they should not abide the consequences, when we know these consequences cannot but redound to the glory of all concerned.

Massachusetts, at that day, as well as at the present, was considered one of the first States of the Union. She had contributed more men and money to carry on the war than any other State, and her people thought, and thought justly, that her voice should be heard. Was it not so heard? and were not the principles of liberty more fully incorporated into the Constitution through her influence, and that of some of the other States, if possible, than was at first embodied in the instrument itself? Although we are aware there has been, and there probably was at the time, as without doubt there are some at this very time, who would be glad to take away the rights of any body, provided they themselves could or can ride into power or preferment by so doing, yet the yeomanry and the great body of the people held, and we trust do hold, a different language, and that liberty and the right will yet be maintained, whatever may be the exertions to prevent them from being upheld.

CHAPTER VIII.

EXTRACTS FROM THE DEBATES IN THE CONVENTION OF THE STATE OF NEW YORK.

The observations made by most of the members of the convention, for adopting the Constitution, held in the State of New York, were, for the most part, directed to the subjects how best to secure the liberties of the State, and individuals of the State, without having any regard to the different races in the country. The situation of the colored man appeared to be, for the most part, passed over in silence, — not because they had any desire to sanction the proceedings of the national convention on the subject, but because it seemed to the different members, who alluded to it at all, as out of their power to remedy. Take, however, this convention as a body, if we may judge by the report given of their proceedings, and we think they did not take a very extended view of the principles embodied in the instrument upon which they were discussing.

Most of their time was taken up in details, and in determining whether the ratio of representation was correct, and whether the liberty of the individual in their own State would be properly secured. But they left the colored man where they found him; they left him, for the most part,

to take care of *himself*, whilst they looked out for themselves. We have, therefore, but little to say of their proceedings.

The following is nearly all we could glean, which was thought had reference to the subject under consideration; but what little we have collected, shows the negro was not forgotten; that he had here the sympathy of some. But, in general, the convention seemed to think the absolute necessity of the case, if they wanted the Union, required them to acquiesce in the proceedings of the national convention; but if they had been differently circumstanced, they would not have given sanction to its proceedings with respect to the slave. While Mr. Hamilton took so decided a stand in favor of what had been done, the others gave way, without an attempt to remonstrate, saving a Mr. Treadwell, who, being absent, sent a communication on the subject, which was published at the end of their discussions. We should, however, judge there was not any very great talent displayed in this convention. A Mr. Smith attempted to make some general opposition; but one word from Mr. Hamilton silenced him, and he at once surrendered at discretion. The consequence was, all the cannon were spiked, and nothing but small arm were afterwards used; though these, we must admit, if properly directed, and made to bear on the right subject, may do as much execution as larger ones.

But, without further comment, we will introduce Mr. Robert R. Livingston. In speaking of

the powers conferred on congress, in distinction to those conferred on the Confederation, "He showed, in a strong point of view, the danger of applying these, and deduced from all his observations that the old Confederation was defective in its principles, and impeachable in its execution, as it operated upon States in their political capacity, and not upon *individuals;* and that it carried with it the seeds of domestic violence, and tended ultimately to its own dissolution."[1]

These observations, if true, should be particularly marked. The Confederation had nothing to do with the *individual* in the several States, while, by the Constitution, the congress of the United States *has.* For it will be perceived, if this is so, it is bound to see that the individual, wherever situated, whether upon the banks of the Savannah, or upon the margin of the Kennebec, if he be unlawfully seized in his person or effects, or receives any punishment without due process of law, should be protected and preserved from such outrages.

"Mr. Smith objected to clause 3d, section 2d, article 1st. He could not see any rule by which slaves were to be included in the ratio of representation. The principle of a representation being that every free agent should be concerned in governing himself, it was absurd to give that power to a man who could not exercise it: slaves have no will of their own: the very operation of it was to give certain privileges to those people who were so *wicked* as to keep slaves. He knew it would be admitted that this rule was founded on unjust principles, but that it

[1] Elliot's Reports, vol. i. p. 193.

was the result of accommodation; which he supposed we should be under the necessity of admitting, if we meant to be in union with the Southern States, though utterly repugnant to his feelings." [1]

After speaking for some time on the subject of representation, and the fear that the spirit of liberty might become extinct that had carried them through the war of independence, from the feeling that had already manifested itself in the different parts of the country, he concluded, by proposing a resolution for the apportionment of the representatives, of which the following is a part:

"That there should be one representative for every twenty thousand inhabitants, until they amount to three hundred; after which they shall be apportioned among the States in proportion to the number of the inhabitants of the States respectively."

If this amendment had been adopted, it will be perceived that in the apportionment for representatives no regard would have been had to paupers, Indians, negroes, or slaves, but all would have been counted.

Hon. Mr. Hamilton said, —

"The first thing objected to is the clause that allows a representation for three fifths of the negroes. Much has been said of the impropriety of representing men who have no will of their own: whether this is *reasoning*, or *declamation*, I will not presume to say. It is the unfortunate situation of the Southern States to have a great part of their population, as well as property, in blacks. The regulation complained of was one result of the

[1] Elliot's Reports, vol. i. p. 204.

spirit of accommodation which governed the convention; and without this indulgence no Union could have been formed. But, sir, considering some of the peculiar advantages which we derive from them, it is entirely just they should be gratified. The Southern States possess certain staples,—tobacco, rice, indigo, &c.—which must be *capital* objects in treaties of commerce with foreign nations; and the advantages which they necessarily procure in these treaties will be felt throughout the United States. But the *justice* of this plan will appear in another view. The best writers on government have held that representation should be comprehended of persons and property. This rule has been adopted, as far as it could be, in the Constitution of New York. It will, however, be admitted that the slaves are not to be considered altogether as property. They are men, though degraded to the condition of slavery. They are persons known to the municipal laws of the States which they inhabit, as well as the laws of nature. But representation and taxation go together, and one uniform law ought to apply to both. Would it be *just to compute these men in the assessment of taxes*, and discard them from the estimate in the apportionment of representatives? Would it be just to impose a singular burden, without conferring some adequate advantage?"[1]

Mr. Melancthon Smith observed, —

"He did not mean to alter the clause in apportioning the representatives as regards slaves. He thought they would have to give that up."[2]

Mr. Harrison, speaking of the objection that had been made to the apportionment of the representatives, and the withdrawal of the objection by

[1] Elliot's Reports, vol. i. p. 213. [2] *Idem*, vol. i. p. 218.

the person who made it, said, — "I think the concession does honor to the gentleman who had stated the objection. He has candidly acknowledged that this apportionment was the result of accommodation, without which no union could have been formed;" [1] and then went on, like the other debaters, considering the number that should be in the house of representatives that would be most likely to secure the *liberties* of the *people*.

Mr. Treadwell, a member of the convention, who was opposed to the adoption of the Constitution, on the ground it took away State rights, and, as he said, would produce a consolidated government, whereby the liberties of the people would ultimately be destroyed, in a speech, published as a supplement to the proceedings of the convention, though not delivered, remarked, among other strong objections, —

"There is another clause in this Constitution, which, though there is no prospect of getting it amended, I think ought not to be passed over in silence, lest such a silence should be construed into a tacit approbation of it. I mean the clause which restricts the general government from putting a stop, for a number of years, to a commerce which is a stain to the commerce of any civilized nation, and has already blackened half of the plains of America with a race of wretches, made so by our cruel policy and avarice, and which appears to me to be repugnant to every principle of humanity, morality, religion, and good policy."

Further on he says, —

[1] Elliot's Reports, vol. i. p. 241.

"If we act with coolness, firmness, and decision, on this occasion, I have the fullest confidence that the God who has so lately delivered us out of the paw of the lion and of the bear, will also deliver us from this Goliath, this uncircumcised Philistine. This government is founded in sin, and reared up in iniquity; the *foundations* are *laid* in the *most singular breach of public trust*, and the top stone is the most *iniquitous breach of public faith;* and I fear, if it goes into operation, we shall be justly punished by the total extinction of our civil liberties. We are invited, in this instance, of becoming partakers in other men's sins; if we do, we must likewise be content to take our share in the punishment."

On the whole, this letter, or speech, was one as firm and as good as any that appears among the whole that was made on the adoption of the Constitution. It would appear he left the Convention, as some, also, of the Massachusetts delegation did, because they would not even have it supposed they gave countenance for a moment to what they thought would injure their own liberties or that of the colored man's.

The Constitution was adopted with the "*full confidence*" that the amendments they had proposed would be incorporated in the instrument, these amendments being accompanied with a bill of rights. These were thirty-three in number, and had more or less reference to the liberty of the individual.

The vote was, yeas 30, nays 27, — a majority, it will be perceived, very small. If Mr. Treadwell had voted, the Constitution would have been accepted but by two votes. The guaranty that

New York gave was not very strong, at the best; and, if Mr. Hamilton's account of the matter is correct, the "capital articles for making treaties — tobacco, rice, indigo," &c. — (cotton, it appears, was not then a staple) had the effect to stop all tongues, and to make them acquiesce in a transaction which, as was observed by Mr. Smith, it would be admitted was founded on unjust principles; which very admission, if true, in itself would cause the whole transaction to be a nullity. For what business or right has any body of men to assemble, and make rules for the government of society, which they themselves acknowledge to be unjust? The counterfeiter, the pirate, the robber, can do no more; and the slimsy excuses made by Mr. Hamilton, to justify the transaction, do but show he could not well justify the case. He says New York, in her legislation, acknowledges that property, as well as individuals, should be represented; and, as negroes at the South were considered such, therefore they should be represented. But he immediately says they were not wholly considered as property, but as individuals: "they were persons known to our municipal courts."

We will ask, if such was the case, are they not responsible persons? Can our courts of law take cognizance of things, and bring things to trial? Mr. Hamilton could not but be aware of the false position in which he was placed, and in which the country was placed, in regard to this thing. But the "capital" articles, and, as we may suppose, the obstinate perseverance of the delegates from

Georgia and South Carolina, together with the prejudices and the known degradation and ignorance of the colored man, and Mr. H.'s want of sympathy with the lower classes of society, and his want of faith that they could by any possibility of circumstances take care of themselves, induced him to act the part he did. A man, in other respects so just, and whose character for honesty and uprightness was so preëminent, makes himself appear in a light not so enviable as could be wished, when he takes a step so opposed to natural justice. To make a man amenable to laws, and yet not give him the power over himself to enable him to obey, and even give another the sole control of his person, while it might be considered by some good theology, could not, by men of sound judgment, be considered good law. No! the foundation of all law presupposes the ability to obey, or otherwise it should be considered no law. For why should a person attempt to do that which it is well known cannot be done? or, if unrestrained, and the person was left free to act, it could be done, yet, being restrained, and obliged to act according to the will and command of another, must not the responsibility of his acts rest on that other? But it may be said the slave is not brought before our courts but for some heinous crime, of which the master may know nothing, or even it may be a crime against the master. But this cannot be a valid objection, because, when a man is placed at the sole will of another, and is made a chattel personal, he at once takes the place

of the brute, and can be no otherwise amenable than as the brute: he may commit a trespass like the ox, but the master must assume the responsibility of the trespass. And here let us remark, is there not a fearful responsibility resting upon the shoulders of those who claim the control of the acts of slaves? and, when a man presumes to take this control, does he not in effect say, let the punishment of his crimes rest on me and my children? We think so. But, whatever may be thought on this subject, we cannot but suppose the men of that age perceived the inconsistency of thus blending the character of the man with the brute, and the slender thread that held slavery together; and that, if justice once prevailed in the courts, it would bring an end to the whole system. We shall shortly see that it was expected such might take place; and strong objections were made to the Constitution on this very ground, — that our judiciary would be called on for a decision in the case. As a number of years has passed away, we hope the time is now fast approaching, when a better understanding on this subject will be more generally diffused, and a more correct idea of the general principles and the purposes of and for which this government was adopted instilled, not only in the minds of our Northern people, but in those of the South; or perhaps we should rather say, when the mind of this people can be brought back to contemplate and carry out the doctrines on which the revolution of this country was brought about, and for which, as the preamble of

our Constitution expressly declares, that instrument was given to the country to secure. We do trust there will be a different action on this subject, and our colored brother may take courage. Let him remember no exception was made to him, — not a word left on the records; but the doctrines of those days applied to him equally with the white man; and, though he may have been looked upon with feelings of disrespect, of cupidity, and of avarice, and as a being over whom they could lord it unrestrained, yet, in the main, a better feeling bore sway: some felt, with deep commiseration, his unfortunate lot, and exerted their utmost efforts to produce a proper feeling as regarded his situation, and succeeded in establishing principles which, we trust, will not only work out his salvation from political and slavish bondage, but every individual, of whatever color or complexion he may be, who may happen to come within the borders of the United States, or step a foot on the shores of America. When it can be said of this land, as it is now said of Britain, —

> "Slaves cannot breathe in England; if their lungs
> Receive our air, that moment they are free:
> They touch our country, and their shackles fall,"—

when such shall be the case, then will the true idea, which apparently actuated the men who have spent their exertions in the cause of liberty and of freedom, be established; then will that glorious day be ushered in, which has been looked forward to with such anxiety by those who have the welfare of mankind at heart, and who have, in

all ages, distinguished themselves as the lovers of their species. For, let us consider, if slavery should be abolished in this country, it undoubtedly would soon be in all parts of the world. Let but America use the same determination to put a stop to slavery that England is now doing, and the traffic in slaves and the using of slave labor would soon cease in every land.

CHAPTER IX.

EXTRACTS FROM THE PROCEEDINGS IN THE CONVENTION OF THE STATE OF VIRGINIA, ON THE ADOPTION OF THE FEDERAL CONSTITUTION.

The proceedings in this State, as well as those in Massachusetts, are highly interesting. The members who composed these two conventions were among the most distinguished men of the land. It undoubtedly was through the influence of these men that the Constitution was brought forward, and finally adopted. They appear to have taken extensive and enlarged views on the science of government, and to have weighed, with as much exactness as appeared in their power, the various evils and advantages to be feared and to be derived from the adoption of that instrument. History was ransacked for examples and for similitudes; objections to former governments were pointed out, and, if possible, were to be avoided. The powers given to the present government were scanned with eagle eyes; no point escaped their observation. The bearing of its different provisions was looked into, its implied powers were commented on with a great deal of ability, and no stone appeared to be left unturned that seemed, in any manner, to conceal a grant that would invest too

much power in the hands of those who should be called upon to govern. They seemed to be conscious they were legislating, not for themselves alone, but for posterity, — for millions yet unborn. In the convention of Virginia, the discussion extended over a wide field. Patrick Henry took a part in opposition to the Constitution: he exerted his utmost eloquence to prevent its adoption; he thought it was fraught with evil; he was fearful it would result in a monarchy; he thought there was too much power given to the executive, the legislature, and the courts; he thought the Confederation was good enough, that the States and the country were getting along well enough, though the Confederation needed some amendments. He was zealous for state rights; he was anxious they should not relinquish those rights to a federal head; but they should depend on themselves, rather than on external powers for government. In fact, he seemed to think all government was a necessary evil; he therefore was jealous, extremely so, of any authority, either expressed or implied; and he kept that convention in a continued ferment and discussion upon the various principles involved in the instrument proposed for their adoption. Marshall, Madison, Randolph, Grayson, Nicholason, Mason, and others, put forth their utmost powers, either in support of, or in opposition to, the views entertained by Mr. Henry. Their discussions were consequently long and arduous; they, however, were full of interest, as they show very distinctly the character and feel-

ings of the men of that age. In these we find strength, firmness, uprightness, consistency, and inconsistency; a desire to do right, and yet a fearful want of faith to do it; a knowledge of their position, and yet an incomprehensible indeterminateness whether they should perform their duty or not. Like Felix of old, they trembled; and yet they wished to put off the day of repentance to a more distant period. On the subject of slavery, they seemed to be well aware of its utter inconsistency with their professions, and the laws they would make; it was on this subject alone that the sincerity of their acts can be called in question. They thought themselves, or at least pretended they were, placed between two fires, and that it was dangerous to advance or retreat. The same honest or dishonest, real or pretended, fears that exist at the present day were manifested; consequently, many of the Southern as well as the Northern delegates wished things to remain as they were, and let time work out a cure. But, fearing the love of liberty was too strong, and that there was a power in embryo, that, if this instrument went into operation, would lay their fancied possessions in the dust, all the delegated powers were looked upon with jealousy by those who did not wish to have the relation of master and slave destroyed. The powers of the courts were scanned and commented on; and, from what we can gather, the opposition made by Mr. Henry to this tribunal was because, in part, he feared what might be its decision, if the case of the slave was brought before

it for adjudication. But, because a slave was taxed but as three fifths of a man, one thought congress viewed them as property, and not as persons, and consequently they might escape. But, as the convention would not allow the slave to be represented till his humanity was allowed, and as no legislature can turn a man into a brute, or a brute into a man, or can convert the soul of man into a chattel personal, into a thing without life or motion, so, whatever any body of men may say respecting him, he yet remains the same; he is ruled by the same spirit, is under the same laws to his God, and is equally morally responsible to him for his conduct, and, as was remarked, equally so to human tribunals; and, if he violated the laws of society in any of its moral aspects, he was liable to be brought before their courts for judgment. If this is so, does not the consequence follow, that, to all intents and purposes, he must be considered a man, and, before human tribunals, must be considered and treated as such? No sophistry can blind the eyes to this fact; and, if a man, he must be regarded as such both by our laws and our Constitution, possessing all the privileges man can possess, where no distinction is pointed out, and where none was meant to be pointed out.

In presenting the reader the following extracts, we were in doubt whether it would not have been better to classify them, putting each under separate heads or chapters; but, on the whole, as there were but four points to be determined — namely, 1st. Those which go to prove the power of the

courts, — 2d. Those which explain the general powers of congress, — 3d. Those which immediately speak of slavery, — 4th. Those that have reference to the object for which the Constitution was formed, in regard to the liberty of the individual; or rather the determination of the people that no Constitution should be formed that put the liberty of the individual in danger — the intelligent reader might perceive, at once, to which subject the extract belonged, and could apply it without being told; and it might be as well to pursue the course adopted, of going through with each convention in its order, and afterwards draw up a summary of the whole, and lay it as distinctly before him as possible; and then he might be able to judge of the conclusion as if a different course was pursued.

We consider each and all of the above as great questions, and of vital importance to the community, and which should be decided. They are questions that interest every person to know; for, upon their decision his individual rights, under the Constitution, may, or may not, be invaded. For if the rights of one individual, no matter whether he be white or black, can be taken from him, and that for no crime the man can be restrained as a slave, then may the rights of all, on the same principle, be taken away: no man is safe, no man can be safe. So far as individuals are concerned, the Constitution is a dead letter; its principles do not apply to them; they are to be recognized as in communities, as States; and the States, and indi-

viduals of the State, if the Constitutions of the States say nothing to the contrary, may enslave as few or many of their people as they may choose. Is this so? We think not. These assertions might have applied, in some measure, to the Confederation; but they cannot be applied under the present arrangement. The Constitution, if we rightly interpret it, has to do with the individual; and, if the community, or the State, or individuals of the State, invade his rights, the Constitution steps in, or should step in, to restore them. What say the arguments of the gentlemen in Virginia who adopted it? We shall see.

In the convention of Virginia, Mr. Henry asked what right the national convention had to use the words "we the people."[1] Governor Randolph answered him by saying, "It was for the people the government was formed;" "in the Confederation they had no voice."[2]

Mr. Pendleton, in answer to Mr. Henry, among other observations, said, —

"What was it that brought us from a state of nature to society but to secure happiness? and can society be formed without government? personify government, apply to it as a friend to assist you, and it will grant your request. This is the only government founded in real compact. There is no quarrel between government and liberty; the former is the shield and protector of the latter. The war is between government and licentiousness, factions, turbulence, and other violations of the rules of society, to preserve liberty. Where is

[1] Elliot's Reports, vol. ii. p. 47. [2] *Idem*, vol. ii. p. 51.

the cause of alarm? .... In the same plan we point out an easy and quiet method to amend what may be found amiss."[1]

Further on he says, —

"But objection is made to the form; the expression, 'We the people,' is thought improper. Permit me to ask the gentleman who made this objection, who but the people can delegate powers? Who but the people have a right to form government? The expression is a common one, and a favorite one with me; the representatives of the people, by their authority, is a mode wholly inessential. If the objection be, that the union ought to be not of the people, but of the State governments, then I think the choice of the former very happy and proper. What have the State governments to do with it? Were they to determine, the people would not, in that case, be judges upon what terms it was adopted."

He then went on to show the imbecility of the Confederation, and the superiority of the Constitution over that in its effective character in forming peace, and in declaring war, and he concluded by saying, "For his part he was well satisfied with this part of the system," including in his remarks the representatives of the States, meaning the senate.

Mr. Lee, of Westmoreland, spoke in favor of using the expression, "we the people," and he thought the house of representatives would be like the house of commons, in the year 1782, who resisted the will of the crown, and be able to protect our liberties.[2]

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[1] Elliot's Reports, vol. ii. p. 57. [2] *Idem*, vol. ii. p. 60.

Mr. Henry made quite a speech in answer, portions of which will be found among the extracts taken from his life, so far as relates to this subject. His whole speech turned on securing the individual and State rights ; he was fearful of the results of the Constitution, of its power of taxation, of the powers of the president. But he wished for the union. His first wish was for *American liberty*, and his second, for American union ; " and he concluded his remarks by saying, " May you be fully apprized of the dangers of the latter, not by fatal experience, but by some abler advocate than I."

Gov. Randolph, in answer to Mr. Henry, who thought the country was in peace, and there was no reason to alter the government, said, —

"There is no peace in this land; can peace exist with injustice, licentiousness, insecurity, and oppression? These considerations, independent of many others which I have not yet enumerated, would be a sufficient reason for the adoption of this Constitution, because it secures the liberty of the *citizen*, *his person*, *and property*, and will invigorate and restore commerce and industry."

He went on in a long speech, giving his reasons why Virginia should adopt the Constitution, on account of her exposed situation, both on her coasts, by Indians, and the other States who had already adopted the Constitution, and from the slaves, which he said at that time " bore the immense proportion of 236,000 slaves to 352,000 whites." He was very eloquent in urging his reasons for the adoption of the Constitution. Mr. Randolph, un-

doubtedly, had some desire the Constitution should be adopted because a greater power would be at command to suppress an insurrection of slaves, though we have no evidence but that he might have wished their individual freedom.

Mr. Madison, in answer to the objections made by Mr. Henry, respecting the consolidation of the government proposed to be adopted, said, —

"Give me leave to say something of the nature of the government, and to show it is safe and just to vest it with the power of taxation. There are a number of opinions, but the principal question is, whether it be a federal or a consolidated government. In order to judge properly of the question before us we must consider it minutely in its principal parts. I conceive, myself, it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the history of the world; it stands by itself. In some respects it is a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal. Who are parties to it? The people; but not the people as composing one great body, but the people as composing thirteen sovereignties. Were it, as the gentleman asserts, a consolidated government, the assent of the majority of the people would be sufficient for its establishment; and, as a majority have adopted it already, the remaining States would be bound by the act of the majority, even if they unanimously reprobated it. Were it such a government as is suggested, it would be now binding on the people of this State, without having

the privilege of debating upon it; but, sir, no State is bound by it, as it is, without its own consent. Should all the States adopt it, it will then be a government established by the thirteen States of America, not through the intervention of the legislatures, but by the people at large. In this particular respect the distinction between the present and proposed government is *very material.* The *existing* system has been derived from the dependent derivative authority of the legislatures of the States; whereas this is derived from the superior power of the people. If we look at the manner alterations are to be made in it, the same idea is in some degree attended to. By the new system, a majority of the States cannot introduce amendments; nor are all the States required for that purpose; three fourths of them must concur in amendments: in this there is a departure from the federal idea. The members of the national house are to be chosen by the people at large, in proportion to the numbers in the representative district. When we come to the senate its members are elected by the States in their equal and political capacity; but had the government been completely consolidated, the senate would have been chosen by the people in their individual capacity, in the same manner as the members of the other house. Thus it is of a complicated nature; and this complication, I trust, will be found to exclude the evils of absolute consolidation, as well as a mere confederacy. If Virginia was separated from all the States, her authority would extend to all cases: in like manner, were all power vested in the general government, it would be a consolidated government; but the powers of the general government are enumerated; it can only operate in certain cases; it has legislative powers on defined and limited objects, beyond which it cannot extend its jurisdiction." [1]

[1] Elliot's Reports, vol. ii. p. 95.

Mr. Corbin, in answer to Mr. Henry, and approving of the Constitution, and of its adoption of the expression "we the people," and of its powers of direct taxation, and of its nature to secure the liberties of the country and of the people, says, — "What power is given that will endanger liberty? I consider *all of the traits of this system* as having a tendency to the security of our liberty." [1] He also spoke of the distracted state of the country, particularly in other States, and the ease with which Virginia herself might be convulsed.

On the request of Mr. Henry, Gov. Randolph concluded his remarks on the divided state of the country, and the necessity of adopting the Constitution. "The debts of the country must be paid. We were much in debt to Europe, and we were unable to pay." Rhode Island, it appeared, had resisted many of the laws of the Confederation, and he thought the powers given were not too great.

"Go through these powers, examine every one, and tell me if the most exalted genius can prove the liberty of the press is in danger. The trial by jury is supposed to be in danger also. It is secured in criminal cases, but supposed to be taken away in civil cases. It is not relinquished by the Constitution; it is only not provided for. Look at the interest of congress to suppress it. Can it be in any manner advantageous for them to suppress it? In equitable cases it ought not to prevail, nor with respect to admiralty causes, because there will be an undue leaning against those characters of

[1] Elliot's Reports, vol. ii. p. 106.

whose business courts of admirality will have cognizance. I will rest myself secure under this reflection, that it is impossible that the most suspicious or malignant mind to show that it is the interest of congress to infringe on this trial by jury." [1]

In continuing his remarks, in answer to Mr. Henry's objections, which, by the way, he thought very unreasonable, he said, —

"He would take notice of what the honorable gentleman had said with respect to the power to provide for the general welfare. The meaning of this clause has been perverted to alarm our apprehensions. The whole clause has not been read together. It enables "congress to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States." The plain and obvious meaning of this is, that no more duties, taxes, imposts, and excises shall be laid than are sufficient to pay the debts and provide for the common defence and general welfare of the United States."

This same opinion we have seen advanced by the Hon. John Q. Adams. Here is a metaphysical distinction we have not yet been able to perceive. Whatever is for the general welfare, it would seem by the expression, it would be in the power of congress to adopt; but this is denied. It is said, — if we understand the expression of the

[1] We have quoted these remarks, and others that will appear in this work, respecting the trial by jury, partly because this subject has been considerably agitated in this community, and to show how jealous the men of that age were on this subject.

gentlemen, — that the powers of congress is in laying the tax; and, after getting the money in its possession, it must then be spent for the general welfare, &c. Nothing is said about the purpose for which the tax is to be raised. This question of raising a tax is the one we should suppose would be the last to be answered. The first, what is for the general welfare? This having been determined on, then comes the power of taxation to pay for it. Or shall it be said we must first raise the money, and after getting it in our possession, we may then look for objects for the general welfare on which to expend it. True, a great diversity of opinions might be entertained on the subject of the general welfare: the bank, for instance, was instituted for the general welfare; it was put down on the same principle, not because it was unconstitutional, for the putting of it down was called an "experiment;" and we have been inclined to think it was an experiment well worth trying. Internal improvement is another instance, and the Cumberland road has been laid out, and yet neither of these powers are expressly granted, though it has been said the establishing either of them is unconstitutional. But they are objected to rather on the ground that the *general* welfare is better promoted by letting the currency be regulated by individuals, and internal improvements be carried forward by the same means, greater economy, safety, &c. being secured; or it is said the government, in carrying out the general welfare of the community, requires these several

agents to perform with facility its operations; and therefore these agents are introduced, not because they are any benefit to individuals, having no immediate connection with the government, but because the government, in its own business, requires their introduction. This, perhaps, is what is meant, and yet we see not how, in establishing a navy, a post-office, in making a road, in granting patents, &c. &c. the general welfare is not first consulted, and the tax laid to pay the expense incurred for carrying into operation these several objects. The power, to us, seems to be granted for the government, in the first place, to see what is for the general welfare; and, having decided what may be for that welfare, then she has the power of laying a tax to carry the object into execution. The power of laying a tax was a secondary power, but a necessary one, to carry the former power into execution: the former power being of no avail without the latter, they certainly were not granted the power of taxing the people for no object; but, if they had an object, that object must first be ascertained. It was, for instance, asserted it would be for the general welfare that a national government should be established; and, after that government was established, it had the power of taxation to pay the officers who should administer it. There could have been no power to tax the people before the people had established a government, unless it had been an usurped power. The granting power to the general government to consult for the general

welfare and the security of liberty, does not grant them the power, as has been asserted, of doing any thing and every thing they might wish, whether their actions resulted in evil or not; but their consultations should be confined to the general welfare, and in protecting individual liberty. But, in performing these *acts*, they should not interfere with the liberty of speech and of the press, with conscience in religious affairs, &c. &c.; and no person should be seized in his person, papers, and effects, &c. without due process of law. If we are here correct, we cannot see how the general welfare and taxation can well be separated, or the distinction that has at times been set up can be made; and Mr. Randolph, in his closing remarks, seems to catch at this idea.

Mr. R. then went on and asked, —

"What would be the consequences, if the government had not this power? Why, you would give it the power with one hand, and take it away with the other; and, had not this power have been given, his affection for it would not have been so great. When it obliges us to tread in the path of virtue, when it takes from the most influential man the power of directing our passions for his own emolument, and of trampling on justice, I hope to be excused when I say that, were it more objectionable than it is, I would vote for the Union."

"Mr. Munroe said he could not help expressing the anxiety which he felt on the occasion, not only from the importance of the subject, but from the profound respect he felt for this august and venerable assembly, [meaning the Virginia convention;] and, after a short peroration, he went on to remark of the similarity of the proposed

government to those republics that had gone before. There were none, he thought, resembled this, but the Achæan league; and he read several passages from Polybius, tending to elucidate and prove the excellences of the structure of that league, and that it was not destroyed by any internal commotions, but by external foes, and at last by being swallowed up by the Roman empire. He did not think we at all resembled Holland, the Swiss, or the confederacy of Athens, Thebes, and Sparta; and, consequently, our policy must be different."[1]

He seemed to think, when the country became settled to the Mississippi, it would be too great for a republic. His expression was, "It is too extensive to be governed but by a despotic monarchy." His opinion must have been changed when he was president, and realized he was presiding over this country, and found it not only settled as far as the Mississippi, but beyond it; and the change in his ideas must have been much greater, had he have come to the conclusion that there was no necessity for any human government whatever, — that mankind were so far willing to subject themselves to the laws of God, that they needed no human restraint. We could sincerely hope and pray that such may be the case. But, after all, we cannot perceive how society can get along without laws, rules, or regulations, for its government; and, if it has them, they must have sanctions. God has a government and has sanctions: must man, or must he not, imitate him in this particular?

But to return: Mr. M. thought we stood in no

[1] Elliot's Reports, vol. i. p. 171.

danger of external foes: he thought they were too far distant, separated as we are from them by the Atlantic: and already different nations of Europe manifested a desire for peace, and were ready to make treaties with us; and that they would not unreasonably call for their claims they had on us for money. He therefore concluded we might, without danger, calmly adopt such a system of government as would be best adapted for the country. He then proceeded to take a comparative view of the Confederacy and of the Constitution, and divided his subject into two heads, —1st, the form, 2d, the powers, of the government. He considered the present system — the Confederacy — defective in both these respects. He asked, "Is the Confederacy a bond of union sufficiently strong to bring the States together? Is it possessed of sufficient power to enable it to manage the affairs of the Union? Is it well organized, safe, and proper? I confess that in all these instances I consider it as defective; I consider it void of energy, and badly organized." He then asked, "What are the powers which the federal government ought to have? and said, to the former he would give control over the national affairs, and to the latter he would leave the care of local interests. Neither the Confederation nor this *Constitution* answer this *discrimination*." He would give the federal government one great power, — absolute control over commerce, — and take away from it the power of direct taxation. He thought on this latter subject the general government

would interfere with the States, and that revenue enough could be raised from lands and imposts, or loans, for all the purposes of government. He thought "congress could not discriminate over so great a territory as to lay direct taxes, that would be satisfactory to the people." He was also in favor of a bill of rights, — "the polar star and great support of American liberty." He thought that, by giving congress all powers to make laws to carry into operation the powers granted, they might take away the trial by jury: "there were no limits pointed out."

"They are not restrained or controlled from making any law, however oppressive in its operation, which they may think necessary to carry their laws into effect. By this general, unqualified power they may infringe, not only the trial by jury, and every right that is not expressly secured, or excepted from the general power. I conceive that such general powers are very dangerous. Our great, inalienable rights ought to be secured from being destroyed by such unlimited powers, either by a bill of rights, or by express provisions in the Constitution. It is immaterial in which of these two modes rights are secured."

He alluded to the divisions of power in the Roman republic and in Great Britain; but he could see no real check in this Constitution. He thought the power of the president too great, and that he could secure his constant reëlection; and that the senate, combined with the president, would destroy the legislative influence of the States; and concluded, under his present impres-

sions, he thought it a dangerous government, and calculated neither to secure the interests nor the rights of our countrymen. And under such a government he should be adverse to embark the best hopes and prospects of a free people. We have struggled long to bring about this revolution, by which we enjoy our present security. Why, then, this haste, this wild precipitancy?

Mr. Madison, in answer, spoke of the "inefficiency of the federal government,"[1] of its "inability to pay the debts" of the country, and "to fulfil its treaties," and "of the contempt with which foreign nations were treating us;" of the "refractory conduct of some of the States;" of their not "paying" the quota of money which they ought; and of the manner in which the country were borrowing money to pay even the interest of what she owed; of the ruinous manner of conducting so; of the necessity of their altering their form of government, and that Washington had acknowledged there was a necessity for so doing, and that the Confederacy had, from the first, proved defective.

Mr. Henry, in reply to Mr. Madison, went on at great length, and said, —

"He saw not the evils that had been stated. He did not know but the country was as well governed as any other; he referred to the Swiss Cantons, to the United Netherlands, the height of power and riches to which these had attained. He explained, as a reason why we

[1] Elliot's Reports, vol. ii. p. 215.

had not paid our debts, was because we had been too extravagant, [what would he have thought if he had lived in these days!] and that by industry and economy these debts could be paid; he saw no danger of the States remaining out of the Union till amendments could be adopted; he thought that Massachusetts, by adopting the Constitution, and then recommending amendments, had put the cart before the horse. He alluded to the observation that the civil power was defective; he knew not that it was so; that there were instances where men had been guilty of very great crimes, and, in consequence, put themselves out of the pale of civilized treatment, and referred to a person[1] who had been punished by an *expost facto* law. He spoke of the Constitution as endangering the liberties of the people, in its taxing power, the power it possessed over the militia and the army, its several arsenals, of its uniting the sword and the purse, of the corruption that might take place among the representatives and senators, and the federal court, particularly when the *freedom* of the CITIZEN should come in opposition to the laws of congress. He treated the explanation given by Mr. Madison of the mixed nature of the government (as we shall give in another place) with ridicule, and concluded by saying he should not give his sanction to that instrument; he, however, desired a union of the States, but not of the kind proposed. It was not the kind of government for which the American people had effected a revolution; it was not for making a *great government, but for individual freedom they had contended.* He said gentlemen may retain their opinions, but I shall look on that paper (meaning the Constitution) as the most fatal plan that could possibly be

[1] Josiah Phillips was the man alluded to. He was attainted by a bill passed by the legislature of Virginia in a very short time after he committed the act for which he was attainted.

conceived to enslave a free people! If such be your rage for novelty, take it and welcome; but you shall not have my consent."

Mr. Henry, in his opening remarks, observed, all governments were a necessary evil, and he alluded to the ten miles square as being an attractive object to some minds; as if he thought that there were some in the country who were anxious to secure to themselves some high station in the government, and, for that reason, were anxious to change the form of government from a confederacy to such a government as was proposed, because it would open the door for a greater number of offices. [Whether such ideas entered into the minds of those who formed the Constitution we cannot say; but offices in these days appear to be very attractive.] In the increase of our army, and the alarming proposition to have the militia of the States under the control of the president; in the desire to spread slavery, and in the assertion that the Constitution guarantees slavery, or, which in effect is the same thing, that we have prevented the government from abolishing it, or provided no way by which it could be abolished, and at the same time have agreed to suppress insurrections, — should we not take alarm, and see that the liberties of this country are not lost; and may we not see, in the servility with which many members of congress bow to the influence of slavery, cause to take warning? We think we should, and should bear in mind those observations made by Mr. Henry.

What could induce northern members of congress to gag the mouths of their own constituents but this desire for office, and this unholy influence, that slavery, the withholding the individual freedom of so large a portion of the inhabitants of our country, has so blinded the eyes of those that remain free they are beginning to lose sight of those principles on which true liberty is founded? and is it not wonderful a man could speak as Mr. Henry here does of individual rights, — that the object of the revolution was not for making a "great government," but to secure "individual freedom," when he himself was a slaveholder, and opposed the Constitution in some of its parts, because in its effect it might destroy the power of the master, and which he feared would take away his supremacy? It seems impossible to explain such a course of proceeding; and it cannot be explained, unless you admit the colored people, in his eyes, were no people; and yet he did not think so. No! it must be put down to man's inconsistency, or, as he himself said, because he really feared true liberty would be endangered by letting the colored man enjoy the same advantages the white man did; he thought they would take advantage of their liberty and become licentious.

Mr. Lee, of Westmoreland, answered Mr. Henry: he defended the Constitution; he referred to Shays's rebellion in Massachusetts, to the tender laws, and a variety of other circumstances, to show there ought to be a change in the government, and that those who desired it were as anxious

for liberty as those who opposed its adoption. He thought the idea of corruption in congress, and in the courts, imaginary; that the people had reserved to themselves all their important rights; that the Constitution was so constructed that "the rulers of the people were vested with certain defined powers, and that what was not delegated to those rulers was retained by the people; that the consequence of this was, that the limited powers were only an exception to those that were vested in the people; that they knew what they had given up, and could be in no danger."[1]

What are these rights, of which Mr. Lee speaks, that are retained by the people? certainly not the rights of the States, for he speaks of the rights of the people. We can form no idea of any other rights than those of which Mr. Jefferson spoke in the Declaration of Independence; the inalienable rights of which every man is possessed, and which the people, in forming their government, retained: it was not the liberty of the States of which he spoke.

Gov. Randolph also spoke in answer to Mr. Henry in defence of the Constitution. He alluded to what Mr. Henry had said in regard to Holland and Switzerland; he thought his objections and comparisons were not correct; and, though he had objections which he had given in a public letter, and which we have, in part, quoted in another place, yet he was anxious to have the Constitution

[1] Elliot's Reports, vol. ii. p. 156.

adopted, because it would secure the *liberties of the people.* He said the coercive power of the Confederation was totally void, and that the people had long been convinced of it, and that this conviction was manifest to the world; that the general government ought to be vested with powers competent to our safety, or else the necessary consequence must be that we shall be defenceless.

"We are told, in strong language, of dangers to which we shall be exposed unless we adopt this Constitution. Among the rest, domestic safety is said to be in danger. This government does not attend to our domestic safety. It authorizes the importation of slaves for twenty-one years, and thus continues upon us that nefarious trade. Instead of securing and protecting us, the continuance of this detestable trade adds daily to our weakness. Though this evil is increasing, there is no clause in the *Constitution* that will prevent the Northern and Eastern States from *meddling with our whole property of that kind.* There is a clause to prohibit the importation of slaves after twenty years, but there is *no provision* made for *securing* to the *Southern States those they now possess.* It is far from being a desirable property, but it will involve us in great difficulty and *infelicity* to be now deprived of them. There *ought* to be a *clause in the Constitution to secure us that property* which we have acquired under former laws, and the loss of which would bring ruin on a great many people."[1]

He concluded by saying he wished for amendments.

Mr. Randolph here says expressly there is "no clause in the Constitution" to prevent the

[1] Elliot's Reports, vol. ii. p. 212.

Northern and Eastern States from meddling with "their whole property," and "that there was no provision made for securing to the Southern States those they" then "possessed." The subject was left open, and, no doubt, intentionally so by many. Mr. Lee even finds fault with Mr. Randolph for making these objections, and points out to him his inconsistency: he seemed to think it right and proper that this property should be interfered with. We hope and trust there are a good many Virginians who yet think the North has a right to *meddle* with slavery, and that they will not think it necessary much longer to hold their peace, but will join the North in their endeavors to scout the abomination from their State, and redeem it from the foul disgrace which the practices of the slaveholder and the slavebreeder are bringing upon it.

It will be perceived the inconsistency of Mr. Randolph is similar to that of Mr. Henry's, and is equally beyond our power to explain, unless it may be ascribed to what he calls the "infelicity" of doing without their slaves; in other words, though they liked liberty themselves, they were too great lovers of their own ease to labor.

Mr. Lee, of Westmoreland, speaking of Mr. Randolph's speech, says, —

"The honorable gentleman abominates it, [the Constitution,] because it does not prohibit the importation of slaves, and because it does not secure the continuance of the existing slavery! Is it not obviously inconsistent to criminate it for two contradictory reasons? I submit it to the consideration of the gentleman whether, if it be

reprehensible in the one case, it can be censurable in the other?"[1]

Mr. Grayson observed, —

"They have the candor to acknowledge that taxes on slaves would not affect the Eastern States, and that taxes on fish and potash would not affect the Southern States. They are then reduced to this dilemma. In order to support this part of the system they are obliged to counteract the first maxim of representation. The best writers on this subject lay it down as a fundamental principle, that he who lays a tax shall bear his proportion of paying it."[2]

Will not the logic here hold good, that he who makes a law shall help bear its burden; and, consequently, any laws in which the slaves have no voice cannot be binding on the slave; and, as a further consequence, that all such laws must be a nullity, void from the moment (if it will not be considered an Irishism) of their enactment, and of no rightful force, no one who was not permitted to have a voice, either pro or con in their promulgation, being at all bound by them? We take it so; and consequently these writers, on whom Mr. Grayson relies for authority, would consider American slavery to be upheld alone by the right of the strongest, and not by any equitable laws; and no laws are binding on a person situated as the slave is, unless they relate to morals, and then not because they are the laws of man, but of God.

Mr. Pendleton, in answer to some of Mr. Henry's remarks, observed, —

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[1] Elliot's Reports, vol. ii. p. 214. [2] *Idem*, vol. ii. p. 222.

"On the subject of government, the worthy member and I differ at the threshold. I think government necessary to protect liberty; he supposes the American spirit all-sufficient for the purpose. What say the most respectable writers, — Montesquieu, Locke, Sidney, Harrington, &c.? They have presented us with no such idea. They properly discard from their system all the severity of cruel punishments, such as *tortures*, *inquisitions*, and the like, — shocking to human nature, and only calculated to coerce the dominion of *tyrants* over *slaves*. But they recommend making the ligaments of government firm, and a rigid execution of the laws as more necessary than in monarchy, to preserve that virtue which they all declare to be the pillar on which the government and liberty, its object, must stand. They are not so visionary as to suppose there ever did, or ever will, exist a society, however large their aggregate fund of virtue may be, but hath among them persons of a turbulent nature, restless in themselves, and disturbing the peace of others, — sons of rapine and violence, who, unwilling to *labor themselves*, are *watching* every opportunity to *snatch from the industrious peasant* the fruits of his honest labor. Was I not then correct in my inference that such a government and liberty were friends and allies, and that their common enemy was turbulence, faction, and violence? They are those, therefore, who will be affected by good government; and for those, I suppose, no gentleman will profess himself an advocate. The writers just mentioned point out licentiousness as the natural offspring of liberty, and that, therefore, all free governments should endeavor to suppress it, or else it will overthrow that liberty of which it is the result. Is this speculation only? Alas, reason and experience too fatally prove its truth in all instances! A republican government is the nursery of science. It turns the bent

of it to eloquence, as a qualification for the representative character, which is, as it ought to be, the road to our public offices. I have already the pleasure of beholding these characters already produced in our councils, and a rising fund equal to a constant demand. May Heaven prosper their endeavors, and direct their eloquence to the real good of their country! I am unfortunate enough to differ [rather say fortunate] from the worthy member in another circumstance. He professes himself an advocate for the middling and lower classes of men. I profess to be a friend to the equal liberty of *all men*, from the palace to the cottage, without any *other distinction* than between good and bad men." [1]

After speaking much in favor of the Constitution, though he did not think it perfect, and was glad that amendments had been proposed, he observed, as it had been proposed to make these the *sine qua non* of the acceptance of the Constitution, and the manner the other States had accepted the Constitution, — those States would say, —

"No, gentlemen, we cannot accept your conditions. You put yourself on the ground of opposition. Your amendments are dictated by *local* considerations. We, in our acceptance, have been influenced by *general* utility to the Union. We cannot abandon principles like these to gratify you. Thus, sir, by previous amendments, we present a hostile countenance. If, on the contrary, we imitate the conduct of those States, our language will be conciliatory and friendly. Gentlemen, we put ourselves on the *same ground you are on.* We are not actuated by *local considerations*, but by such

[1] Elliot's Reports, vol. ii. p. 228.

as affect the people of *America* in *general.* This conduct will give our amendments full weight." [1]

He then alluded to a letter written by Mr. Jefferson to one of the delegates, in which he expressed a wish that nine of the States would accept of the Constitution, that the good that might be derived from it might be secured, and that the other four might not agree to it "until" "amendments" should be secured. But, by having this division, he hoped there would be no "schism" in the Union; and then concluded by saying, —

"The Constitution points out a plain and obvious method of reform, without any disturbance or convulsions whatever. I therefore think we ought to ratify it, in order to secure the union, and trust to this method for removing those *inconsistencies* which experience shall point out."

These observations of Mr. Pendleton's before a body of slaveholders, before men whose whole course of action was one of systematic "snatching from the industrious peasant the fruit of his honest labor," must have been severe. If we can judge what would be the consequence if such observations were now made before a body of slaveholders, from the manner they have of late exhibited their character, any thing but pleasant results would follow. Plainness of speech in those days was not considered as unbecoming men in *good society;* it was not then considered the evidence of fanaticism, whatever may have been their other faults; and we think Mr. Henry and Mr. Randolph must have felt the rebuke here given. It appears,

[1] Elliot's Reports, vol. ii. p. 294.

also, he was glad amendments had been proposed; but he thought Virginia should do as Massachusetts and the other States had done, — adopt the Constitution as it was, and then prepare their amendments. He thought by telling the other States that, unless they adopted their amendments, they would not give their sanction to the Constitution, it would appear — as undoubtedly it would have done — "like dictation;" and perhaps also he did not altogether like the amendments which the convention proposed, being, as he said, "a friend to the liberty of all men," "without any other distinction than between good and bad men;" and the amendments prepared by the convention had inserted the word "freemen," in speaking of rights to be enjoyed under the Constitution, by which a distinction would have been made between a slave and a person who was not. He may have been desirous that distinction should not be made in the Constitution; and we shall find it was not.

Mr. Henry, speaking of the requisition to be made for troops by the United States, and that they would be apportioned according to the number of "blacks" as well as "whites," asked, "how *oppressive* and *dangerous* must this be to the South, who alone have slaves? This will render their proportion infinitely greater than that of the Northern States. It has been openly avowed this shall be the rule. I will appeal to the judgment of the committee, whether there be danger."[1]

[1] Elliot's Reports, vol. ii. p. 241.

It is mortifying to see and know how completely the North has been taken in, in all her attempts to secure herself from the effects of slavery. Patrick Henry here thought this call for men to defend the country would require a much larger proportion of the white men of the South than of the North; and, if men for our army and navy were raised in the manner contemplated in the Constitution, it would undoubtedly have been found, by the burden it would have put on their shoulders, to have been too great for them. But the course pursued is, no requisitions are now made; most, if not all, of our army and navy are composed of volunteers, and of northern men. The southerners, accustomed to be masters, are too lazy to do the drudgery of an army; even the defence of their own territory falls on northern men. And when, from the nature of the case, their presence is thought to be absolutely necessary, as in the case of the Florida war, they refuse to do the ordinary work of soldiers; such, for instance, as carrying their own provisions. We are surprised any of our northern men will do it for them, — consent to be their lackeys, merely for the sake of laying their bones among the everglades of that Territory; for there seems to be no other object; at least, none other has as yet been attained. But, as Mr. Giddings, of Ohio, in his late speech in congress, has said, this whole war was nothing but a negro hunt. We trust our northern people will not be seen as soldiers in company with such a banditti, whoever may be their captain-general.

Mr. Henry, speaking of the power to call forth the militia, said, —

"The 10th section of the 1st article, to which reference has been made by the worthy member, (Mr. Grayson,) militates against himself. It says, 'No State shall engage in war, unless actually invaded.' If the country be invaded, a State may go to war, but cannot suppress insurrections. If there should happen to be an insurrection of slaves, the country cannot be said to be invaded. They cannot therefore suppress it, without the interposition of congress. The 4th section of the 4th article expressly directs that, in case of domestic violence, congress should protect the State, on application of the legislature or executive; and the 8th section of the 1st article gives congress power to call forth the militia to quiet insurrections. There cannot, therefore, be a concurrent power. The State legislatures ought to have the power to call forth the efforts of the militia when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The States cannot now call them, let an insurrection be ever so perilous, without an application to congress: so long a delay may be fatal."

"There are three clauses which prove, beyond a possibility of a doubt, that congress, and congress only, can call forth the militia. The clause giving congress power to call them out to suppress insurrections, &c. that which restrains a State from engaging in war, except when actually invaded, and that which requires congress to protect the States against domestic violence, render it impossible that a State can have power to intermeddle with them."[1]

It would appear Mr. Henry thought that con-

[1] Elliot's Reports, vol. ii. p. 315.

gress had taken from the States all power to suppress an insurrection, and had made it a national affair. Though not true as regards the power of a State to suppress an insurrection of its inhabitants, yet it is true that, when a State calls on congress for assistance in case of an insurrection, she is bound to give it; and consequently can it be said the subject of slavery is sectional, not national? that the States have alone the right to legislate on the subject? Such a supposition cannot be true. Congress must have control over the subject, unless it be said, and with truth, that the States have a right to involve the country in a civil war, by their practices and laws, without any national interference. Will any statesman say that this may be the case? We think not. So long as each and every part of the country alike are bound to suppress an insurrection of slaves, so long do we hold it that slavery is a national affair; and the North may not now hide herself, under the idea that she has no concern with the subject. An acquaintance with our history would make it apparent that such an attempt on her part would be like the foolish ostrich, who, when she is pursued, and finds she cannot escape, or being unwilling to be the witness of her own disgrace, thinks to evade her pursuers, or be shielded from mortification, by hiding her head under a leaf, or other small substance, while her whole body is left exposed to attacks. And, also, all of the new States have come into the Union through the consent of the old States; and now, after giving their consent

they should enter the Union, have they now no farther control, or are they not implicated in the system of slavery, if they will now tolerate it? can they guarantee to the different States they will protect them from an internal insurrection of slaves, and yet put it out of their power to say aught against this system? If it is so, it is in effect guaranteeing, as has been said, the system of slavery. But this they have not done.

Mr. Madison, in answer to Mr. Henry, in his supposition congress had unlimited control, said,—

"There is a powerful check in that paper. The *State governments* are to govern the militia, when not called forth for general or national purposes, and congress is to govern such part only as may be in the actual service of the Union. Nothing can be more certain and positive than this. It expressly empowers congress to govern them when in the actual service of the United States. It is then clear that States govern them when they are not.

"With respect to suppressing insurrections, I say that these clauses, when they are mentioned by the honorable gentleman, are compatible with a concurrence of the power. By the first, congress is to call them forth to suppress insurrections and repel invasions by foreign powers. A concurrence in the former case is necessary, because a whole State may be in an insurrection against the Union. *What has passed will perhaps justify this apprehension.*"[1]

After speaking of the invasion of foreign states, and even of a neighboring State, and of the power

[1] Elliot's Reports, vol. ii. p. 316.

to guarantee to each State a republican form of government, he says, —

"On application of the legislature or executive, as the case may be, the militia of the other States are to be called to suppress domestic insurrections. Does this bar the States from calling forth their own militia? No! but it gives them a *supplementary* security to suppress insurrections and domestic violence."

Mr. George Nicholas, in answer to Mr. Henry's assertion that there was no power in the States to quell an insurrection of slaves, asked, —

"Have they it now? If they have, does the Constitution take it away? If it does, it must be in one of those clauses which have been mentioned by the worthy member. The first part gives the general government power to call them out when necessary. Does this take it away from the States? No; but it gives an additional security; for, besides the power in the State government to use their own militia, it will be the duty of the general government to aid them with the *strength* of the *Union*, when called for. No part of this Constitution can show that this power is taken away." [1]

Let us not be deceived by the idle declamation, that, although we at the North are liable to be called upon to keep the slave in subjection, the slave so loves his master, and is so attached to his household, he would not rise in rebellion; that he had rather wear his bonds than have them loosened from his limbs. This is not so: they are constantly running away; and their taking shelter among the Indians in Florida has been

[1] Elliot's Reports, vol. ii. p. 318.

the occasion of the Florida war, in which many of the men and officers of our army have been sacrificed, and forty millions of dollars have been spent by the country.[1] On the same account the Cherokees have been removed from the land of their fathers, though nearly, if not quite, as civilized as those who desired their removal. There our soldiers have been under arms, and our money has been most profusely squandered. Again, immediately after the Southampton insurrection, and the intended insurrection in Wilmington, North Carolina, our troops were called into service, and, during the hottest portion of the year, had to take their station in the cities of the South, to protect the homes of the planter, while he was luxuriating on the sea-shore, or had come to the North to escape the sicknesses that are more especially attendant on the white man in the warm latitudes of our country; and but a short time since, our troops have been ordered to Louisiana for a similar purpose. Are these things to be continued forever, and we say nothing about them? Are the hard-working yeomanry of this latitude to be taken from their fields, their families, and their friends, to stand guard over the negro? — the negro did we say? no! the slave, we should have said, whether white or black; for it makes no difference, at the South, of what complexion the slave is: so long as

[1] In the Natchez Courier, printed in the State of Mississippi, we counted, in the course of three months, SEVENTY-SIX advertisements for the recovery of persons, in Adams county alone in that State, who had run away, or who had been committed to prison for so doing.

the mother was a slave, the child must be a slave also. Must, then, the yeomanry of the North be sent to the South to keep the slave in subjection, merely to support a few rich nabobs in idleness? Is our northern mother to bend with anxious solicitude over the cradle of her infant, and rejoice that a man child is born into the world, for no other purpose than that he may be reared with knapsack on his back, and firelock in hand, with bayonet fixed, ready to thrust it into a fellow-mortal, simply because his fellow does not wish to render an involuntary service to another without compensation, without pay? Is this the purpose for which mankind are sent into the world? is this the purpose for which the Constitution of these United States was formed? We hope the good sense of the North will answer no! ay, even the South will answer no!

If, then, the whole strength of the military power of this Union is at any and at all times liable to be called into requisition to put down insurrections that may happen in any one of these United States, it would seem very strange if its moral and political power may not be put in requisition to prevent such a catastrophe, by rendering that justice that can alone produce peace and harmony in the relations which different portions of the body politic sustain to one another. It is idle for the South to say, as we think, the United States as a body cannot interfere with slavery as it exists there, when she has it in her power to call upon that body to render any assistance she may ask to

keep her slaves in subjection, and worse-than idle, for the North to say she has nothing to do with slavery, when she is thus liable to be called upon. No! the country, the whole country, is guilty of slavery, so long as it exists in any one of the States, when the others are thus liable to be called on to maintain it, unless, as we shall attempt to show, she has provided means for every person in his individual capacity to attain his freedom. But, if he in his individual capacity cannot, then she is bound to give it.

Mr. George Mason, in speaking of section 9th, which prevents congress from prohibiting the slave-trade for twenty years, said, —

"This is a fatal section, which has created more dangers than any other. The first clause allows the importation of slaves for twenty years. Under the royal government, this evil was looked upon as a great oppression, and many attempts were made to prevent it; but the interest of the African merchant prevented its prohibition. No sooner did the Revolution take place than it was thought of. IT WAS ONE OF THE GREAT CAUSES OF OUR SEPARATION FROM GREAT BRITAIN. Its exclusion has been a principal object of this State, and most of the States of the Union. The augmentation of slaves weakens the States; and such a trade is diabolical in itself, and disgraceful to mankind. Yet, by this Constitution, it is continued for twenty years. As much as I value the union of all the States, *I would not admit the Southern States into the Union unless they agreed to the discontinuance of this disgraceful trade*, because it would bring weakness, and not strength, to the Union. And, though this infamous traffic be continued, we have no

security for the property of that kind which we have already. There is *no clause to secure it;* for they may lay such a tax as will amount to manumission. And should this government be amended, still this detestable kind of commerce cannot be discontinued till after the expiration of twenty years; for the fifth article, which provides for amendments, expressly excepts this clause. I have ever looked upon this as the most disgraceful thing to America. I cannot express my detestation of it. Yet they have not secured to us the property of the slaves we have already. So they have done what they ought not to have done, and left undone that which they ought to have done." [1]

We find, according to Mr. Mason's understanding of the Constitution, that slavery was far from being guaranteed to the South. A most singular inconsistency appears in this gentleman's ideas. While he laments, and would have exerted his utmost to have prevented, the slave-trade, and considered it so disgraceful he could not even express his abhorrence of it, and would even have excluded the more southern States from coming into the Union under the Constitution, if this traffic must be continued, yet he is not prepared to, and does not see how he can, give up his own slaves, or see that the keeping of them involves as much guilt as the traffic. For ourselves, we cannot perceive why, if a man may be owned with impunity, he may not be sold with impunity. May a person not do what he will with his own? The only way we can account for such incon-

[1] Elliot's Reports, vol. ii. p. 335.

sistency is, slavery, like alcohol, destroys the moral sensibilities of our natures; our moral feelings are blunted; their influence destroys our moral faculties, and they leave a man in comparative moral darkness. We cannot account for this on any other principle.

Mr. Madison, speaking of this 9th section, said,—

"I should conceive this clause to be impolitic if it could be excluded without greater evils. The Southern States would not have entered into the Union of America without the *temporary* permission of that trade. And if they were excluded from the Union the consequences might be *dreadful* to them and us. We are not in a worse situation than before. That traffic is prohibited by our laws, and we may continue the prohibition. The Union, in general, is not in a worse situation. Under the articles of Confederation it might be *continued forever*, but by this clause an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstances. A tax may be laid in the mean time, but it is limited; otherwise congress might lay such a tax as would amount to a prohibition. From the mode of representation and taxation, congress cannot lay such a tax on slaves as would amount to manumission. Another clause secures us that property which we now possess. At present, if any slave elopes to those States where slaves are free, he becomes emancipated by their laws; for the laws of the States are uncharitable to one another in this respect; but in this Constitution 'No person held to service or labor in one State, under the laws thereof, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.' This clause was expressly in-

serted to enable owners of slaves to reclaim them. This is a better security than any that now exists. No power is given to the general government to interfere with respect to the property in slaves now held by the States. The taxation of this State being equal only to its representation, such a tax cannot be laid as he supposes. They cannot prevent the importation of slaves for twenty years; but after that period they can. The gentlemen from Georgia and South Carolina argued in this manner: 'We have now liberty to import this species of property; and much of the property now possessed has been purchased, or otherwise acquired, in contemplation of improving it by the assistance of imported slaves. What would be the consequence of hindering us from it? The slaves of Virginia would rise in value, and we be obliged to go to your market.' *I need not expatiate on this subject.* Great as is the evil, a dismemberment of the Union would be worse; if these States should disunite from other States for not indulging them in the *temporary* continuance of this traffic, they might solicit and obtain aid from foreign powers."[1]

It is a great pity the laws have not always been considered uncharitable, and that no man-catcher had ever been permitted by the justices of our inferior courts to secure his victim and carry him back to a state of bondage.

Mr. Madison seems here to say the convention did actually make a provision that, in the manner in which the representation and taxation went together, it would be impossible for congress to liberate the slaves by way of taxing them; and he also cites the section which, it is said, concerns

[1] Elliot's Reports, vol. ii. p. 335.

runaway slaves; and he thought this would secure the property they then possessed in slaves. He appears perfectly willing no more of the colored men should be stolen and brought to our shores; but he does not seem to reflect that all slaves are stolen property, and consequently the rightful owners may take them whenever they think proper, and they can be secured within their own power. At least, this is the doctrine universally held with regard to all other stolen property; and we have yet to learn any good reason why this doctrine should not hold good here; and, if so, who, it has well been asked, has a better claim over the bones and sinews of a man than he who carries them about? If it is wicked to steal a man, it is as wicked to retain a stolen man in our possession against his consent.

In the observations made by Mr. M. we have a striking example of the inconsistency of man; and, so far as it was meant to keep the slave in continual bondage, we will not in the least extenuate the matter. But, in continuing his speech, and falling upon the consequences that would result, if the foreign slave-trade should be stopped, and they continued to hold them in Virginia, and the domestic trade should spring up, he began to sicken at the contemplation that Virginia, the Old Dominion, she who had produced her Washington, her Jefferson, and such a galaxy of the lovers of liberty, at least for themselves, should become a slave-market for the farther South, and her renowned in war and in council should degenerate into pro-

ducers of slaves for Carolina and Georgia! Would it not be enough to sicken any rational being, and prevent him from expatiating upon a subject so full of disgrace? Before he died, must he not have realized his forebodings, and must it not have weighed down his spirits? To prevent such a catastrophe, and not to have it understood Virginia was then ready to become a slave-breeding State — though it has been said that, when the slave-trade was finally prohibited, she was willing to become one — they permitted this abominable traffic, from fear, as Mr. M. intimates, that the South would obtain her slaves from Virginia, rather than from Africa; and from the fear that greater danger would result to the country, if a union of the States was not effected. We can only trust they were sincere in their expressions: nothing else could secure them from the most gross hypocrisy. They did not know which way to turn: to go forward in a generous emancipation, they were not prepared; and they knew not how to go back to a general dissolution of the States: they dared not do either. To use the language, as we have understood, of Jefferson, "they had the wolf by the ears: to hold on was dangerous, and to let go more so." They were not then, and mankind are not now, ready to admit the doctrine that it is far more safe to do right than continue in the path of wrong; that it is better for all classes that individual rights should be every where respected; and that he who sows and he who reaps should be alike rewarded; and that, in fact, in

proportion as the producing classes are intelligent and well provided, so is the whole community advanced in a state of civilization, manufactures, and the arts. It is the intelligent workman who can perceive when science can be applied, and who makes improvements in machinery, and not the man of letters: a man of letters may discover principles, but it is the workman who applies these principles to his arts.[1]

"Mr. Tyler warmly enlarged on the impolicy, iniquity, and disgracefulness of this wicked traffic. He thought the reasons urged by gentlemen in defence of it were inconclusive and ill-founded. It was one cause of complaint against British tyranny that this trade was permitted. *The Revolution put a period to it; but now it was to be revived.* He thought nothing could justify it. This temporary restriction on congress militated, in his opinion, against the arguments of gentlemen on the other side,—that what was not given up was retained by the States; for, if this restriction had not been inserted, congress could have *prohibited* the *African slave-trade.* The power of prohibiting it was not expressly delegated to them; and yet they would have had it by implication, if this restraint had not been provided. This seemed to him to demonstrate most clearly the necessity of restrain-

[1] We know of one instance where an intelligent mechanic, by the name of Wright, has saved to our manufacturing establishments perhaps hundreds of thousands of dollars, in applying machinery to the making the simple article of bobbin-heads; and of another, by the name of Pickering, who, by making a snow-plough, has saved the labor of hundreds of men, in clearing the tracks of our railways; to say nothing of those who have made the improvements and discoveries in the application of steam and machinery, that are in constant use throughout this country and in Europe.

ing them by a bill of rights from infringing our inalienable rights. It was immaterial whether the bill of rights was by itself, or included in the Constitution. But he contended for it, one way or the other. It would be justified by our own example, and that of England. His earnest desire was, it should be handed down to posterity that he had opposed this wicked clause."[1]

We will do what we can to let the world know what opinion was entertained by Mr. Tyler on this subject; and we will express the hope his namesake entertains the same opinions.

"He then adverted to the clauses which enabled congress to legislate in the ten miles square, and other places purchased for forts, magazines, &c.; to provide for the general welfare; to raise a standing army; and to make any law that is necessary to carry these laws into execution. From the combined operation of these unlimited powers he dreaded the most fatal consequences," &c. &c.

We trust, however, with these powers, the American citizen will yet be able to, and will, grant that justice to the colored race which is their due; and that this Constitution, as supposed by Mr. Tyler, was adopted for the general welfare of the people of the United States, and will be found wholly incompatible with slavery, and totally opposed to it; and that the best interest of this country will never be attained till that excrescence is cut from the body politic, and consigned to the tomb of the Capulets, never more to have a resur-

[1] Elliot's Reports, vol. ii. p. 336.

rection; that, if the courts do not decide against it, it will yet be found by congress, upon investigation, to be a stumbling-block in the way of all improvement, and a barrier to the best interest of our country; and that the restoring man to himself will be the only way of securing peace and permanent prosperity to our land; and that true liberty cannot be established throughout this extensive continent but by giving up this institution; and the sooner the better will it be for all concerned. Mr. Madison, however, said, in answer to the latter objections made by Mr. Tyler, that "the gentleman was mistaken; that the powers of congress extended to those alone that were 'enumerated;' and, if congress attempted to exert powers not enumerated, it would not be warranted by the clause."

"Mr. Henry insisted that the insertion of these restrictions on congress was a plain demonstration that congress could exercise powers by implication. The gentleman had admitted it could have interdicted the African slave-trade, were it not for this restriction. If so, the power not expressly delegated must be obtained by implication. He demanded, where, then, was their doctrine of reserved rights? He wished for negative clauses, to prevent them from assuming any powers not expressly given. *He asked, why was it omitted to secure us that property in slaves which we hold now? He feared its omission was done with design.* They might lay such heavy taxes on slaves as would amount to emancipation; and then the Southern States would be the only sufferers. His opinion was confirmed by the mode of *levying money*. Congress, he observed, had

power to lay and collect taxes, imposts, and excises. Imposts (or duties) and excises were to be uniform. But this *uniformity* did not extend to *taxes*. This might *compel* the Southern States to *liberate* their *negroes*. He wished, therefore, this property to be guarded. He considered the clause that had been adduced by gentlemen as security of this property as *no security at all*. It was no more than this, — that a runaway negro might be taken up in Maryland and New York. This could not *prevent congress* from interfering with that property, by laying a grievous and an enormous tax upon it, so as to compel owners to emancipate their slaves, rather than to pay the tax. He apprehended it would be the subject of much stock-jobbing, and that they would play into one another's hands in such a manner as that this property would be lost to the country."[1]

Mr. Henry's entire speech on this occasion, while it shows his inconsistency as a man, shows also his opinions of the powers of congress. He FEARS they have designedly omitted some expressions, that, if used, would have established him in his slave possessions; but, being omitted, and, as he said, he *feared* it was done *designedly*, we may suppose him correct in his fears. No one denied, so far as is reported, that Mr. Henry was incorrect in these insinuations. An explanation is given in another place by Mr. Madison, and Mr. Randolph, of which we shall leave the reader to judge.

Mr. Henry speaks as if a man was to be lost to the country by being a freeman instead of a slave! What an idea for one of the greatest

[1] Elliot's Reports, vol. ii. p. 337.

advocates in the country for freedom, in its most extensive sense, when his own rights were concerned! But who shall explain the inconsistency of man? A person who had kept a whole State in suspense for three or four weeks because, in some remote degree, the Constitution that was proposed for adoption was thought to contain paragraphs that might have deleterious effects upon the liberty of certain individuals; yet complaining it did not hold others with an iron grasp, and even because masters should be taxed for their slaves! We all know how anxious the South were to relieve themselves from the imposition of this tax; and, as we have observed before, they succeeded; and, as Mr. H. supposed, there was a good deal of stock-jobbing; but it all happened to be on the wrong side; and, instead of the negroes being freed, they have so arranged it, the master pays no tax for his negro, and the slave has been made more secure in his bondage.

"Mr. George Nicholas wondered, [and well he might,] that gentlemen who were against slavery would be opposed to this clause, as, after that period, the slave-trade would be done away. He asked if gentlemen did not see the inconsistency of their arguments? they object, says he, to the Constitution, because the slave-trade is laid open for twenty odd years; and yet tell you that, by some latent operation of it, the slaves, who are so now, will be manumitted. At the same moment it is opposed for being promotive and destructive of slavery. He contended it would be advantageous to Virginia, that it would be in the power of congress to prevent the importation of

slaves after twenty years, as it would then put a period to the evil complained of."[1]

It would seem, from the arguments of all the gentlemen, both from the North and from the South, that the destruction of the slave-trade would put an end to slavery. Perhaps it would have so done, had there not been a home market, and a home supply. But, instead of the destruction of the foreign slave-trade decreasing the number of the slaves in this country, they have gone on constantly increasing, till their numbers have become, if it is intended to keep them as slaves, alarmingly great.

Mr. Nicholas then spoke of the difficulty of effecting the union without this clause; that Virginia might continue the prohibition of the slave-trade; the superior advantages they possessed in not having more than two fifths of their slaves taxed instead of the whole number, and that the taxes could not be laid so high as to amount to emancipation; and, among other things, said, "I can tell the committee that the *people* of our *country* are *reduced* to *beggary* by the *taxes* on *negroes*." "Had this Constitution been adopted, it would not have been the case. The taxes were laid on all our negroes. By this system, two fifths are exempted." He then added, "He had imagined gentlemen would not support here what they had opposed in another place."

Mr. Henry made a short answer, and said, —

[1] Elliot's Reports, vol. ii. p. 337.

"*Personalities* he wished to take leave of; they had nothing to do with the question, which was solely whether that paper was wrong or not."

"Mr. Nicholas replied, that negroes must be considered as persons or property. If as property, the proportion of taxes to be laid on them was fixed in the Constitution. If he apprehended a full tax on negroes, the Constitution has prevented it. For, by the census, when a white man paid ten shillings, a negro paid but six; for the exemption of two fifths of them reduced it to that proportion." [1]

Mr. Henry, it would seem, had opposed slavery in some other place; but, for some reason or other, — we know not what, — he had taken different ground in the convention, and Mr. Nicholas reminded him of it, at which Mr. Henry took offence, and did not seem desirous his inconsistency should be pointed out. The course he took in the convention on this subject will not, we think, add to his renown as a statesman or a philanthropist.

With regard to the tax spoken of, the slaveholder does not now pay even the six shillings; for not only is the burden of a direct tax thrown off, but nearly all the articles the slave uses, as we have before remarked, are manufactured or produced in this country; and consequently he pays no revenue. Here are nearly three millions of individuals, who are both willing and able to help support the government of our country, but who are not permitted; while a great portion of the whole burden of its support falls upon the North, who are now not allowed to be heard upon the

[1] Elliot's Reports, vol. ii. p 338.

floor of congress! and our politicians, if they can gain a place, are willing to have it so; and our *reviewers* are trying to argue the North has no interest in the matter!!!

In speaking of the powers of the Supreme Court, Mr. Grayson said, —

"The jurisdiction in all cases arising under the Constitution and the laws of the Union is of stupendous magnitude. It is impossible for human nature to learn its extent. It is so vaguely and indefinitely expressed, that its latitude cannot be ascertained. Citizens or subjects of foreign states may sue citizens of different States in the federal courts. It is extremely impolitic to place foreigners in a better situation than our own citizens. This never was the policy of other nations. It was the policy of England to put foreigners on a secure footing."[1]

"This high court has not very extensive original jurisdiction. It is not material; but its appellate jurisdiction is of immense magnitude; and what has it in view, unless to subvert the State governments? The honorable gentleman who presides has introduced the high court of appeals. I wish the federal appellate court was on the same foundation. If we investigate the subject, we shall find this jurisdiction perfectly unnecessary. It is said that its object is to prevent subordinate tribunals from making *unjust decisions to defraud creditors.* I grant the suspicion is in some measure just. But would not an appeal to the State court of appeal, or superior tribunals, correct the decision of inferior courts? Would not this put every thing right? There then would be no interference of jurisdiction."[2]

Speaking of the State courts, and the courts of

[1] Elliot's Reports, vol. ii. p. 414. [2] *Idem*, vol. ii. p. 416.

the United States, he says, "Both courts are to act on the *same persons and things*, and cannot possibly avoid interference."[1]

Mr. George Mason, in remarking on the second section, said, —

"On a former part of the investigation of this subject gentlemen were pleased to make some observations on the security of property [meaning slaves] coming within this section. It was then said, and I now say, that there is no security, nor have gentlemen convinced me of this."[2]

Without further debate the third section was then read.

We will here ask, is not a man's liberty of more consequence than money? and, if he is defrauded of this liberty, has not the court jurisdiction? and, if the inferior courts make a wrong decision on the subject, may not the Supreme Court have power to reverse it? We should think so; and, if these courts order a man back to slavery without there has been proved before them that the person claimed is indebted by contract, of his own making, to the person who claims his service, may not an appeal be properly made, or judgment be given, and then an appeal be made to the Supreme Court for its jurisdiction and judgment? And, agreeably to the 4th, 5th, 6th, 8th, and 10th articles of the amendments to the Constitution, if a person called a slave is "seized in his person," or punished without a trial by jury before some public authori-

[1] Elliot's Reports, vol. ii. p. 417. [2] *Idem*, vol. ii. p. 428.

ties, may not the so called master be brought before it for transgressing these express articles of the amendments, one of which (the 8th) was made on purpose to suit his case? We hope it will not be long before some humane people, either at the North or South, will be able to test the question, whether a master can whip or restrain a slave, on his own authority, and in pursuance of this Constitution.

Here is also the candid acknowledgment of the Hon. George Mason, that the Constitution provided *no security* for property in slaves: he could see none in the Constitution, and no one in the Virginia convention could point out any to him. Massachusetts had already adopted the Constitution, recommending amendments, securing in a greater degree the individual rights of every person, "whether residing on the banks of the Savannah," or "on the margin of the Kennebec," because some of the members of that State thought these rights were not sufficiently secured in the instrument submitted for their adoption, and Mr. Mason undoubtedly knew of these amendments proposed by her. And, while no allusion is made to these amendments, neither he, nor any of the Virginia delegation, so far as the reports show, could perceive where slave property was at all secured by that instrument; saving that, as it was afterwards argued, because the so called slave could be taken up in another State, it could not be supposed that, after he was taken back, the master could be deprived of him. But, when we consider the

amendments made to this clause, we cannot suppose it was intended, by those who made these amendments, to return the runaway slave: such cannot be admitted, unless we admit their duplicity, — a charge for which, for ourself, we have not sufficient evidence. If we are correct, and as Mr. Madison said there must not be two principles in that instrument, where, then, we ask, is the evidence of the guaranty, or compact, that has been so often rung as a bugbear in the ears of the North? there is none; there was none. If a few gentlemen in congress, unknown to the public, said the subject should or would not be disturbed by the North, it was done, if done at all — and we have no evidence it was done — without any authority given to do it, even if they had the inclination. But we do not believe the inclination to any extent existed: all seemed ready to give up the system but South Carolina and Georgia; and they, as was said, only wanted to make up a deficiency of laborers; and, as white people could not work in those States, their only alternative, as they affirmed, was to obtain them from Africa; and, when the slave-trade ended, then ought to have ended slavery. We do not, then, improperly interfere in urging the South to fulfil her engagement to the world, to have this a free country, nor should we, by obtaining a decision of the court that no person can be held in bondage by the Constitution of our country, break any contract that we, as northerners, have made. It has continued longer than it ought to have continued, and

longer, on trust, than the civilized world will permit it to continue. We should both blush and be ashamed for our ingratitude to those men who assisted us in our distress, on the ground that this country should be a land where the people of all nations should be secure in their individual rights, and every man be able to sit under his own vine and fig-tree, without any to molest or make afraid. Will there, then, be no lawyer who will undertake the task to maintain an action of the kind before the highest court of the country? Can there be no case, either as original or appellate, that can be searched out, and made to be the pioneer of a succession of cases, till freedom to individuals is universally acknowledged? We hope there will be, and the time will not be distant when a decision can be had, and the rights of the slave acknowledged. They can certainly appeal to the observations here made by Mr. Mason, that the courts have power over the subject; that slavery does come within their jurisdiction; and that not only Mr. Mason, but the whole of the Virginia delegation, silently admitted the fact; and, when the suggestion was made, the subject was dropped, *as too delicate for further discussion.* Can and need there be farther proof that such is the case? Were the men of this assembly too insignificant to be authority in the case? Was not Madison, Randolph, Munroe, Nicholas, Grayson, Henry, Mason, capable of discernment?

My colored friends, it is a pity none of you ever discovered this truth, and have not applied your-

selves to urge upon the consideration of the courts the wrongs under which you have suffered, and caused them — as we think they must have done — to have rendered a judgment in your favor.

We are aware it is said the consideration which was given the free States for the continuance of slavery, or, rather, that the three fifths representation should take place, besides the preventing congress passing navigation acts, was, that they in general were small States, while the slave States were comparatively large; consequently they admitted the small States to an equal representation on the floor of the senate. But this cannot amount to much, for it is well known the States had an equal representation under the Confederacy; that is, one State had as many representatives as another, and therefore they did surrender much when they allowed the larger States a greater representation in the house of representatives; for we have seen Mr. Martin, of Maryland, says some of the small States expressly instructed their delegates not to give up an equal representation; as, if they did, they would be swallowed up by the larger States; but they finally consented to the present arrangement. There are now, however, as many large free as there are large slave States; but this, in fact, was not the case: not passing the navigation act was alone a consideration for permitting the slave-trade to be continued till 1808. No other contract, that we have yet been able to discover, was ever entered into: the size of the States had no relation to the subject.

Mr. Henry, on the resolution for the ratification of the Constitution, with certain amendments, said,—

"The honorable member must forgive me for declaring my dissent from it; because, if I understand it rightly, it admits the new system is defective, and most capitally; for, immediately after the proposed ratification, there comes a declaration that the paper before you is not intended to violate any of these three great rights, — the liberty of religion, the liberty of the press, and the trial by jury. What is the inference, when you enumerate the rights you are to enjoy? That those not enumerated are to be relinquished. There are only three things to be retained, — religion, freedom of the press, and jury trial. Will not the ratification carry every thing, without excepting these three things? Will not all the world pronounce that we intended to give up all the rest? Every thing, by way of right, is comprehended in these three things. Your subsequent amendments only go to these three amendments." [1]

"Among the ten thousand implied powers which they may assume, they may, if we be engaged in war, *liberate* every one of your slaves if they *please*. And this must and will be done by men, a majority of whom have not a common interest with you. They will, therefore, have no feeling for your interest. It has been repeatedly said here that the great object of a national government was national defence. That power which is said to be intended for security and safety may be rendered detestable and oppressive. If you give power to the general government to provide for the general defence, the means must be commensurate to the end. All the

[1] Elliot's Reports, vol. ii. p. 430.

means in possession of the people must be given to the government which is intrusted with the public defence.

"In this State there are 236,000 blacks, and there are many in several other States; and yet, if the northern States shall be of opinion that our numbers are numberless, they may call forth every national resource. May congress not say every black man must fight? Did we not see a little of this in the last war? We were not so hard pushed as to make emancipation general; but acts of assembly passed, that every slave that would go to the army should be free. Another thing will bring this about. *Slavery is detested; we* feel its fatal effects; we deplore it with all the pity of humanity. Let all these considerations at some future period press with full force on the minds of congress. Let that *urbanity* which I trust will *distinguish America*, and the necessity of national defence, — let all these things operate on their minds, and they will search that paper, and *see* if *they have power of manumission.* And *have they not, sir?* Have they not power to provide for the general defence and welfare? May they not think these call for the abolition of slavery? May they not pronounce all slaves free, and will they not be warranted by that power? there is *no ambiguous implication*, or *logical deduction.* The paper speaks to the point. They have the power, in *clear*, *unequivocal terms*, and will clearly and certainly exercise it. As much as I deplore slavery, I see that freedom forbids its abolition. I deny the general government ought to set them free, because a decided majority of the States have not the ties of sympathy and fellow-feeling for those whose interest would be affected by their emancipation. The majority of congress is to the North, and the slaves to the South. In this situation I see a great deal of the property of the people of Virginia in jeopardy, and their peace and tran-

quillity given away. I repeat it again, that it would rejoice my very soul that every one of my fellow-beings were emancipated. As we ought to acknowledge with gratitude that decree of Heaven which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellow-men in bondage. But is it practicable, by any human means, to liberate them without producing the most dreadful and ruinous consequences? We ought to possess them in the manner we have inherited them from our ancestors, as their manumission is incompatible with the *felicity* of the country. But we ought to soften, as much as possible, the rigors of their unhappy fate. I know that, in a variety of particular instances, the legislature, listening to complaints, have admitted their emancipation. Let me not dwell on this subject. I will only add that this, as well as every other property of the people of Virginia, is in jeopardy, and put into the hands of those who have no similarity of situation with us. *This is a local matter*, and I *can see no propriety in subjecting it to congress*."[1]

These expressions of Mr. Henry probably explain the cause of his action, and his inconsistencies: it was that the sympathies of a people afar off — a people who were not of them — would undertake to interfere in their domestic concerns. This he did not want to have done: he saw the Constitution gave this power, and, if we believe him sincere in his deploring slavery, he wished to have the sole control over the subject. He labored under the false idea there was property in man, and that the State would be reduced to poverty if the slave should be emancipated. In

[1] Elliot's Reports, vol. ii. p. 431.

fact, there is no property in man; so far from it, slave labor is not so valuable as free; and consequently the master is a loser by keeping him. He is valuable only when he is let out, or is made an article of produce or of merchandise. In all cases of labor, the free man is the cheapest; and the result would be, the planter would be a gainer by changing his system of labor. As a practical evidence that such would be the fact, we have only to look at the North and at the British West India Islands, as a fair illustration. Therefore, if any gentlemen, who really entertain any honest fears in regard to immediate emancipation, and, like Mr. Henry, are fearful of pursuing the path that leads to universal liberty, they have now only to turn their eyes to us and to the isles of the ocean, or compare the condition of the North with that of the South, to allay their fears. But if, on the other hand, they mean to change the policy of the country, and to make this continent a dwelling-place for slaves, instead of a land for the free, then, we say, it is time for the lovers of liberty — for we cannot say for the American people — to arouse themselves, and see that such shall not be the case.

Gov. Randolph asked Mr. Henry, "Where, in the paper submitted by Mr. Withe, do you discover the people of Virginia are tenacious of their rights only? It declares that all power comes from the people, and that whatever is not granted by them remains with them; that among other things remaining with them are liberty of the

press, right of conscience, and some other essential rights."[1] He then goes on to say, —

"The honorable gentleman and some others have insisted that the abolition of slavery will result from it, and at the same time have complained that it encourages its continuation. The inconsistency proves, in some degree, the futility of their arguments. But, if it be not conclusive to satisfy the committee that there is no danger of enfranchisement taking place, I beg leave to refer them to the paper itself. I hope there are none here, who, considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia, — that at the moment they are securing the rights of her citizens, that an *objection* is started, there is a SPARK of hope that these unfortunate men, now held in bondage, may, by the operation of the general government, be made free. But, if any gentleman be terrified by this apprehension, let him read the system. I ask, and I will ask again and again, till I be answered, — not by declamation, — where is the part that has a tendency to the abolition of slavery? Is it in the clause which says that the migration or importation of such persons as any of the States *now existing* think proper to admit 'shall not be prohibited by congress prior to the year 1808?' This is an exception from the power of regulating commerce, and the restriction is only to continue till 1808. Here congress can, by the exercise, prevent future importations; but does it affect the existing state of slavery? Were it right here to mention what passed in the convention on the occasion, I might tell you that the Southern States, even South Carolina herself, conceived this property to be secure by these words. I believe that,

[1] Elliot's Reports, vol. ii. p. 436.

whatever we may think here, there was not a member of the Virginia delegation who had the smallest suspicion of the abolition of slavery. Go to their meaning. Point out the clause where this formidable power of emancipation is inserted. But another clause proves the absurdity of the supposition. The words of the clause are, 'No person held to service or labor in one State, under the laws thereof, escaping into another State, can, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.' Every one knows that slaves are held to service or labor. And, when authority is given to owners of slaves to vindicate their property, can it be supposed they can be deprived of it? If a citizen of this State, in consequence of this clause, can take his runaway slave in Maryland, can it be seriously thought that, after taking him and bringing him home, he could be made free?

"I observe the honorable gentleman's proposition comes in a very questionable shape, and is still more extraordinary and unaccountable from another consideration, — that, although we went article by article through the Constitution, and although we did not expect a general review of the subject, — as a comprehensive view had been taken of it before it was regularly debated, — yet we are carried back to the clause giving that dreadful power for the general welfare. Pardon me, if I remind you of the true state of that business. I appeal to the candor of the honorable gentleman; and, if he thinks it an improper appeal, I ask the gentlemen here, whether there be a general, indefinite power of providing for the general welfare. The power is, 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare.' So they can only raise money by these means, in order

to provide for the general welfare. No man who reads it can say it is general, as the honorable gentleman represents it. You must violate every rule of construction and common sense, if you sever it from the power of raising money, and annex it to any thing else, in order to make it that formidable power which it is represented to be."

In reviewing these remarks made by Gov. Randolph, we will first make the inquiry, what was said in the convention? Certainly, if any thing was said too improper to be repeated before the convention of Virginia, the ideas should be considered too improper to be acted out before the world. But here, we suppose, Mr. Randolph alludes to the vaunted compact; but what does it all amount to? Why, some of the members of the convention said something which Mr. R. was ashamed to repeat, — that South Carolina was satisfied, because congress permitted the slave-trade to continue twenty years longer; and the delegates of Virginia were satisfied, because congress permitted a man to be transferred from one State to another, if he owed service or labor to any one who might claim this ownership of labor, if it was proved to be due.

But, as Mr. Wilson, of Philadelphia — as we shall see — said, there was no compact; this paper was a straight-forward paper; it meant what it said, and nothing more. Pennsylvania, thereby disclaiming any compact, and Massachusetts, fearing the slaveholder might take advantage of what might have been said, disclaimed having any thing to do with such a compact, and introduced an

amendment to do away the authority of the master; and congress afterwards refusing to admit the word "freeman" in some of the amendments Virginia recommended, (which was probably put in for the very purpose of doing away the objections of Mr. Henry,) which amendments were afterwards adopted as part of the Constitution, after having this word "freeman" stricken out, consequently leaving, and, as we must perceive, with design, the amendments devoid of any expression that would involve them in contradictions, and consequently left the word "person" in the Constitution to mean all persons, whether white or colored, bond or free; so that, even if the convention had made an open and avowed compact, the people disannulled it.

Is there not a dishonorable suggestion in that sentiment, that, while they were legislating for the freedom of the white citizen, "there might be a ray of hope the black man should be free;" and yet, by artfully contrived wordings of certain portions of the Constitution, it is here given us to understand a sixth part of the population of the country was to be kept in bondage, and no power lodged any where to have their fetters broken? O shame! where is thy blush?

The question might here be asked, what are the debts of the Union, and how came they to be contracted? Were they contracted, and are they only to be contracted, for having our guns scoured, and hiring men to butcher one another? and do we contract, and must we not contract, debts for any

other purpose? and when the general welfare has been consulted in any other way, and money is spent for the object, must it at once be pronounced unconstitutional? And is it always to be so? Cannot mankind learn a lesson, — that it is equally as safe, as pleasant, and as satisfactory, to treat one another as friends and brothers, as it is to be constantly fighting, and making it their boast they have been the cause of the death of thousands, and have made tens of thousands widows and orphans? We are aware, if slavery is continued, there is no alternative. If one half of our countrymen mean to imbrute and enslave the other half, we must be kept in a constant state of bloody excitement. Fightings among ourselves can never cease: a good portion of our community, as has lately been proposed by our late secretary of war, Mr. Poinsett, must be kept constantly ready for service, and to shoulder their muskets to maintain a system of outrage against human nature. We cannot but suppose this suggestion of his arose from the fear entertained by the holders of human beings as property. The slaveholders, knowing that the position they hold is one wholly opposed to a peaceful state of society, and that they cannot maintain their position but by brute force, consequently are willing to forego all the blessings peace brings in its train, in order to enjoy a brief hour of tyranny and oppression. We stop not here to inquire how utterly at variance, in the manner of providing for the common defence and general welfare, these ideas are with those enter-

tained by the people of the country who gave their sanction to the Constitution; but we do say here, we hope the American people will never submit to such a departure from the State right principles of that day as to raise such a standing army, but be more jealous than they ever have been for the liberties they now enjoy.

Mr. Madison coincided with Gov. Randolph respecting the reserved rights of the States, and observed,—

"I was struck with surprise when I heard him express himself alarmed with respect to the emancipation of slaves. Let me ask, if they should ever attempt it, if it will not be an usurpation of power? There is no power to warrant it in that paper. If there be, I know it not. But why should it be done? Says the honorable gentleman, for the general welfare; it will infuse strength into our system. Can any member of this committee suppose that it will increase our strength? Can any one believe that the American councils will come into a measure which will strip them of their property, discourage and alienate the affections of five thirteenths of the Union? Why was nothing of this sort aimed at before? I believe such an idea never entered into an American breast, nor do I believe it ever will, unless it will enter into the heads of those gentlemen who substitute unsupported suspicions for reasons." [1]

Does Mr. Madison here deny that the power given in the general welfare is not ample? No! it only never entered his mind that a general emancipation could ever be for the general welfare.

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[1] Elliot's Reports, vol. ii. p. 452.

He could not conceive how a general emancipation could increase the strength of the country. But if it could be proved it would be for the general welfare, that strength would be infused into the system, that it would not strip them of property, but even make their real property more valuable, and would allay the heart-burnings which slavery has already engendered, and must continue so to do, what then would be his answer? But he says he sees no power in that paper to warrant a general emancipation, and "if it was exercised it would be an usurpation;" and "that such an idea never entered an American breast, and that it never would enter into the head of any gentlemen but those who substituted unsupported suspicions for reasons." But such an idea did enter the head of Patrick Henry; it has entered into the heads of other gentlemen, and we trust it will enter into the heads of more than it has already. For what did the American people form a Constitution? What was the object? Was it simply that they might declare war, regulate commerce, and coerce money from the pockets of the people to pay the debts of a general government for performing these acts? Has the general government, we repeat, nothing else to do but to keep a standing military force, to establish custom-houses along our coasts, keep a register of our vessels, and then pay the men for doing this business? and that the doing any thing for the general welfare, the securing liberty to ourselves and our posterity were idle dreams, and that the person who could suppose

such could have been the object of any one of that day, or in coming time, were only those "who substitute unsupported suspicions for reasons?" We will admit the paying the debts of that day was pretty important; and if it takes two thousand dollars to collect an hundred, as it is reported to have done for the past few years in the State of Maine, and paying forty millions of dollars to hunt fugitive slaves in Florida during the same term, the necessity of paying the debts contracted in our own time will become equally as important as it was then. But we believe the American people had some other object in view; they did mean the general government should have it in their power to promote the general welfare when that welfare could be clearly ascertained. True, there may be a great difference of opinion what may be for the general welfare; but when any thing for it could be clearly pointed out, then it could be carried into effect, if the liberty of the individual was not infringed upon; but the moment that was done their power ceased, because it was to secure this liberty they declare was one of the objects for forming this Constitution. This the people understood; it was to this they gave their sanction. Mr. Zedekiah Johnston — and his name should be kept in remembrance for the ideas he entertained and expressed — understood it so; and he, for one, was willing that slavery should be made to cease. We hope he has some descendants left in Virginia; and, if they entertain his opinions, we do not care how many are scattered over the

Southern States. We trust an army of such men will appear there before long.

The people, if we are correct, consented to the Constitution, on the principle that individual rights were secured, and on no other; and, when any thing could be done, consistently with those rights, for the general welfare, it was in the power of congress to do it. Congress has exercised this right in purchasing Louisiana, establishing a bank, in giving bounties to fishermen, in making a Cumberland road, in fitting out an exploring expedition, &c. &c. True, the right of doing so has been denied, yet, in some shape or other, this right has been exercised, from the time the Constitution was adopted to the present moment. It is not, however, our plan here to give opinions on this subject, but simply to state facts. If, then, congress has exercised the right, under the sanction of the government and of the people, in assisting a valuable class of citizens, &c. &c. may she not interfere, and protect one sixth of our population from being deprived of all their rights? The experiment, at least, of sustaining them in those rights, to ascertain whether the negro, the colored man, the slave, has not as much ability of sustaining himself as the fowls of the air, or the beasts of the field? whether God has not made the human species when it possesses a dark skin, capable of taking care of themselves? whether, when the hue of the skin varies from the whiteness of the snow, mankind then become savages, thieves, robbers, murderers? that they then possess not the principles

of natural affections, of virtue, of religion, of honesty? At any rate, we think it would be an experiment well worth trying, and at least of as much importance, as the attempt to know whether the country could get along without a United States Bank. We trust it would prove, with a vast deal more success, though in both cases we might hope the experiment would not fail.

Mr. Harrison, on the general question, and nearly at the end of the debate, said, —

"The situation and disposition of the States render subsequent amendments dangerous and impolitic, and previous amendments eligible.

"New Hampshire does not approve of the Constitution as it stands. They have refused it so. In Massachusetts we are told that there was a decided majority in their convention who opposed the Constitution as it stood, and were in favor of previous amendments, but were afterwards, by the *address* and *artifice* of the federalists, prevailed upon to ratify it.[1]

"*Rhode Island is not worthy of the attention of this house.* She is of no weight or importance to influence any general subject of consequence.[2]

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[1] We understand, from Mr. Benjamin Russell, who was the reporter to the convention, there was, on a careful count, found to be just two thirds, on the arrival of the members to attend the convention, who were opposed to the Constitution.

[2] What does the State of Roger Williams say to this? or may we suppose that it is this *good* opinion entertained of her by our southern friends, she, in turn, has been so ready to uphold the slaveholder in his acts, since this great struggle for freedom has commenced?

We understand, when the congress of the Confederation proposed to the several States to lay a duty of 5 per cent. on certain

"Connecticut adopted it without proposing amendments.

"New York, we have every reason to believe, will reject the Constitution, unless amendments be obtained. Hence it clearly appears that there are three States which wish for amendments.

"Jersey, Pennsylvania, and Delaware, have adopted it unconditionally.

"In Maryland there are a considerable number who wish amendments to be had.

"Virginia is divided, let this question be determined which way it will. One half of the people, at least, wish amendments to be obtained.

"North Carolina has decided against it. South Carolina has proposed amendments.

"Under this representation it appears there are seven States that wish to get amendments. Can it be doubted, if these seven States insist on amendments as the condition of their accession, that they would not be agreed to? Let us not be persuaded into an opinion, that the Union will be dissolved if we reject it. I have no such idea." [1]

Mr. Innes, in a speech in favor of adopting the Constitution, without previous amendments, or, rather, without insisting on amendments before adopting the Constitution, said, —

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articles of importation to pay the debts of the country, Massachusetts complied with the requisition. A few weeks after this compliance on the part of Massachusetts, Rhode Island passed a resolve to give a bounty of the same amount on the same articles if imported into that State!!

It was probably such acts as these on the part of some of the States which made Washington and other statesmen of the day see the necessity of a change of government, if they meant the country should fulfil its engagements to the world.

[1] Elliot's Reports, vol. ii. p. 457.

"Virginia first discovered the defects of the existing Confederacy. When the legislature was sitting a few years ago, they sent an invitation to the other States to make amendments to it. After some preparatory steps, the late federal convention was called. To this was sent select deputies from all the States except Rhode Island. After five months spent in tedious investigation, they with great difficulty devised the paper on the table, and it has been adopted by every State which has considered and discussed it."

Mr. Zedekiah Johnston, in urging the adoption of the Constitution, observed, —

"They tell us they see a progressive danger of bringing about emancipation. The principle has begun since the revolution. Let us do what we will it will come round. Slavery has been the foundations of that impiety and dissipation which have been so much disseminated among our countrymen. If it were totally abolished it would do much good." [1]

The discussion, after a few more had spoken, came to a close; and the president (Mr. Edward Pendleton) took the chair, and Mr. Matthews reported, —

"That the committee, according to order, had again the proposed Constitution under their consideration; and had gone through the same, and had come to several resolutions thereupon, which he read in his place, and afterwards delivered them in to the clerk's table, and were as follows:

"Whereas the powers granted under the proposed Constitution are the gifts of the people, and every power

[1] Elliot's Reports, vol. ii. p. 470.

not granted thereby remains with them and are at their will, no right, therefore, of any denomination can be canceled, abridged, restrained, or modified by the congress, by the senate or house of representatives, acting in any capacity, by the president, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and, among other essential rights, liberty of conscience and of the press cannot be canceled, abridged, restrained, or modified by any authority of the United States.

"And whereas any imperfection which may exist in said Constitution ought rather to be examined in the mode prescribed therein for obtaining amendments than by a delay, with a hope of obtaining previous amendments, to bring the Union into danger:

"*Resolved*, That it is the opinion of this committee that the said Constitution be ratified.

"But, in order to relieve the apprehensions of those who may be solicitous for amendments,—

"*Resolved*, That it is the opinion of this committee that whatsoever amendments may be deemed necessary, be recommended to the consideration of congress, which shall first assemble under the said Constitution, to be acted upon according to the mode prescribed in the fifth article thereof."[1]

After these resolutions were adopted, and some other preliminary steps taken, Mr. Wythe reported the following, among other amendments, to be recommended to the congress that should first assemble under the Constitution.

"1. That there are certain natural rights of which

[1] Elliot's Reports, vol. ii. p. 473.

men, when they form a certain compact, cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety." [1]

If a people cannot, by any legislative enactments, deprive their own posterity of the foregoing blessings, much less can they deprive those who are not connected, and have no connection with them, of their life, liberty, &c. If they cannot deprive their own sons of their liberty, much less can they deprive the sons of another people of theirs. Is it not so? Has not a father, if he possesses any right at all, a greater right over the liberty of his own sons than over the sons of his neighbor?

"3. That government ought to be instituted for the common benefit, protection, and security of the people, and that the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and *destructive* to the *good and happiness* of mankind." [2]

"9. That no *freeman* ought to be taken, imprisoned, or disseized, of his freehold, liberties, privileges, franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the law of the land.

"10. That every *freeman* restrained of his liberty is entitled to a remedy, — to inquire into the lawfulness thereof, and to remove the same, if unlawful; and that such remedy ought not to be denied or delayed.

"11. That, in controversies respecting property, and in suits between man and man, the ancient trial by

[1] Elliot's Reports, vol. ii. p. 483. [2] *Idem*, vol. ii. p. 483.

jury is one of the greatest securities to the rights of the people, and ought to remain sacred and inviolable.[1]

"12. That every *freeman* ought to find a certain remedy, by a recourse to the laws, for all injuries and wrongs he may receive in his person, property, and character. He ought to obtain right and justice freely, without sale, completely and without denial, promptly and without delay; that all establishments and regulalations contravening those rights are oppressive and unjust."

"14. That every *freeman* has a right to be secure from all unreasonable searches and seizures of his person, his papers, and property: all warrants, therefore, to search suspected places, or seize any *freeman*, his papers, or property, without information upon oath, (or affirmation of a person religiously scrupulous of taking an oath of legal and sufficient cause,) are grievous and oppressive; and all general warrants to search suspected places, without specially naming and describing the place or person, are dangerous, and ought not to be granted.

"15. That the people have a right peaceably to assemble together to consult for the common good, or to instruct their representatives; and that every *freeman*

[1] We have introduced a number of observations on the subject of the trial by jury, because it has been a subject, in these days, much commented on, and because many have been disposed to look upon it in somewhat an unfavorable light, as it militated against what was considered for the best interest of the community. But we fear we have been so long accustomed to a free state of society, and have comparatively seen so little of arbitrary governments, we have almost forgotten how vitally necessary it is for the security of the rights of the individual, and the liberty of his person. We trust, therefore, however it may sometimes be perverted, we shall yet hold it as the apple of the eye, and no more have it given up, if it could be under any of our State constitutions, than we would have this member plucked from its socket because it sometimes gives pain.

has a right to petition, or to apply to the legislature for the redress of grievances.

"16. That the people have a right of freedom of speech, and of writing and publishing their sentiments; that the freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated."[1]

There were in all twenty amendments proposed, but the above have the most direct bearing on the question. They all, however, like these, go towards establishing the freedom of the citizen, at least the *free* one.

The main question of adopting the Constitution was resolved in the affirmative by 89 yeas, 79 nays. Patrick Henry, William Grayson, James Munroe, George Mason, were among the nays.

A number of these amendments proposed by Virginia were, for the most part, adopted by the people of the United States, and have become a part of the Constitution. We can, perhaps, tell what meaning was meant to be put on these amendments by the word or words stricken out, as sometimes a single word will give a peculiar significance to a sentence, and entirely alter its import. And is there not an important word in the above resolutions which would give a peculiar meaning to them? and is not that word the word *freeman?* If that remained in, the framers of the Constitution may have been said to have meant slavery should be continued; but, as we shall see, they struck it out, and substituted the word *person*, without any qualification; consequently, every

[1] Elliot's Reports, vol. ii. p. 284.

person, be he black, white, or gray, is, by our Constitution, under its protection; "he has a right to be secure from all unreasonable searches and seizures," &c. If so, we would ask, what is more unreasonable than to seize and make a slave of a man who has committed no crime against the individual who seizes him, or against society at large? We know of nothing.

What say the people of Virginia to the right of publishing one's sentiments now? let her votes in congress on the subject of petitions answer. Does she in this thing maintain her ancient honorable standing, even in words, where the *free* citizen is concerned? We are under the painful necessity of saying she does not.

CHAPTER X.

EXTRACTS FROM THE PROCEEDINGS IN THE CONVENTION OF NORTH CAROLINA.

The convention in this State spent much time in the discussion of the power of impeachments. They appeared to think it was a matter of considerable importance; and the report of their discussion is very full. But, as this subject contains nothing that immediately applies to the subject under consideration, it may be proper only to allude to it, as a matter of information to those who may wish to know the fact. It may also be well to say there were a number in this convention who wanted to act on the proposed Constitution as a whole; and, as far as we could judge from the debates, it was among those who wanted to reject it because it did not favor their views on the subject of slavery; though the reasons why they opposed are not clearly stated. But their counsels did not prevail, and the advantages and disadvantages of the proposed form of government were generally discussed.

The following quotations comprise nearly all that was reported to have been said on the several subjects under discussion, together with such other observations as were thought to throw light on the several points at issue.

Mr. Davie, in answer to Mr. Goudy, who said he did "not wish to be represented with negroes," especially if it increased his burdens, said, —

"The gentleman does not wish to be represented with negroes. This, sir, is an unhappy species of population; but we cannot *at present* alter their situation. The Eastern States had great jealousies on this subject. They insisted that their cows and horses were equally entitled to representation; that the one was property as well as the other. It became our *duty*, on the other hand, to acquire as much weight as possible in the legislature of the Union; and, as the Northern States were more populous in whites, this only could be done by insisting that a certain proportion of our slaves should make a part of the computed population; but, on consideration, it was found impracticable to determine the comparative value of lands and other property, in so extensive a territory, with any degree of accuracy; and population alone was adopted as the only practicable rule or criterion of representation. It was urged by the deputies of the Eastern States, that a representation of two fifths would be of little utility, and that their entire representation would be unequal and burdensome; that, in a time of war, slaves rendered a country more vulnerable, whilst its defence devolved upon its free inhabitants. On the other hand, we insisted that, in a time of peace, they contributed, by their labor, to the general wealth, as well as other members of the community; that, *as rational beings*, they have a *right to representation*, and, in some instances, might be highly useful in war. *On these principles*, the Eastern States gave the matter up, and consented to the regulation as it has been read. I hope these reasons will appear satisfactory. It is the same rule or principle which was proposed some years ago by congress, and

assented to by twelve of the States. It may wound the delicacy of the gentleman from Guildford, [Mr. Goudy,] but I hope he will endeavor to accommodate his feelings to the interest and circumstances of his country."[1]

Mark the language of this gentleman; that it was on the *principle* the South acknowledged the negroes were rational beings that the North consented to let them be represented, and not before; and just so far as they were taxed, just so far were they allowed to vote: three fifths were to have votes, and three fifths were to be taxed; or, what amounted to the same thing in practice, each man was called three fifths of a man. But is this "rational being" represented in our national councils? Is he who, they have allowed, in a time of peace, contributed to the general wealth, cared for? is his interest looked after? Is he who has been toiling the fifty-three years since this Constitution has been adopted, to add to our wealth, had any one from the South come forward, before the councils of our nation, to ask for him a little respite from his toils, or to consider him, in the least degree, for all the labor he has performed? Can we look for no gratitude for such a length of service, or "is there no flesh in man's obdurate heart," and does he not yet "feel for man?" Are the words of the poet ever to remain true? and are governments and courts of law, like corporations, ever to be without souls? Is man never to receive justice from their hands, when avarice bids them nay? We wait, with anxious solicitude, for the reply.

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[1] Elliot's Reports, vol. iii. p. 41.

Mr. Spencer, in speaking of taxation, said, —

"I am sensible that laws operating on individuals cannot be carried on against States, because, if *they* do not comply with the general laws of the Union, there is no way to compel a compliance but by force."[1]

Here is an instance where Mr. Spencer says, directly, that congress had to do with the individual instead of the States; in fact, our revenue laws bear directly upon the people, and the States, as States, have nothing to do with them: the power of taxation for the support of the general government is wholly confided to the people, and not to the States; and, consequently, as was intimated in many of the speeches made on the occasion, it was supposed that congress would lay such a tax on the slave as would compel emancipation; and the only way they thought they could escape was, the taxes would be in proportion to the representatives, and therefore could not be so increased as to compel emancipation. We, on the whole, incline to think it would have done it, if direct taxes had been laid for the support of the general government as was at first proposed.

"Gov. Johnston observed[2] that a member says that it

[1] Elliot's Reports, vol. iii. p. 78.

[2] In this same speech, speaking of paper money, for the moment it gave great relief. "It assisted in prosecuting a bloody war. It is destructive in the end; it was struck, in the last instance, for the purpose of paying the officers and soldiers. The motive was laudable. I then thought, and still do, that these gentlemen [speaking of the officers of the army] might have had more advantage by not receiving that kind of payment. It would have been better for them, and for the country, had it not been emitted. We have in-

is improper to take the power of taxation out of the hands of the people. I deny it is taken out of their hands by

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volved ourselves in a debt of £200,000. We have not, with this sum, fairly and honestly paid £50,000. Was this right? But, say they, there was no circulating medium. This want was necessary to be supplied. It is a doubt with me whether the circulating medium be increased by an emission of paper currency. Before the emission of paper money there was a great deal of hard money with us. For *thirty years* past I have not seen so much money in circulation as we had at the emission of paper money in 1783. That medium was increasing daily. People from abroad bring specie; for, thank God, our country produces articles which are every where in demand. There is more specie in the country than is generally imagined, but the proprietors keep it locked up. No man will part with his specie. It lies in his chest. It is asked, why not lend it out? The answer is obvious: that, should he once let it out of his power, he never could recover the whole of it. If he bring a suit, he will obtain a verdict for one half of it. This is the reason of our poverty. The scarcity of money must, in some degree, be owing to this, and the specie that is now in this country might as well be in any other part of the world. If our trade was once on a respectable footing, we should find means of paying that enormous debt." *

Mr. Maclane said, "We had more money in gold and silver in circulation than we have nominal money now." "It is well known that in this country gold and silver vanish when paper money is made." †

In introducing these remarks, we have done it on account of the present agitation of the question respecting paper money, to make our readers acquainted, if they were not before, what was said on the subject on its first introduction in this country. One cannot but smile at the enormous debt then contracted, when we have now State debts of about two hundred millions; and, if report says true, the States in many cases have involved themselves without having but very little to show for their indebtedness.

We have also introduced them, in part, from the fear lest, in the great anxiety to obtain a national bank, any compromise should be made with the South to grant her a standing army, if she will consent to the establishment of such a moneyed institution.

* Elliot's Reports, vol. iii. p. 167. † *Idem*, p. 89.

this system. Their immediate representatives lay these taxes."[1]

We would wish our readers to take notice of the remarks of Mr. Iredell, of North Carolina, and those of Mr. Spraight, and McDowall: in these we probably have the sentiments of most of the American people. How different at the present day, when our republican presidents, representatives, and reviewers, would endeavor to make us believe that all America had made it a point to guarantee this abomination to the South, when, according to truth, it was directly the other way! Nothing but the absolute necessity, according to this account of the sayings and doings of the people of even North Carolina, of forming a union, that the foreign slave-trade was permitted to continue for twenty years, and that against the will and wishes of all portions of the Union, saving South Carolina and Georgia. And, without doubt, it is to those two States that we, at the present day, are indebted for the continuance of the slave system; and these observations show how much we have to fear if it is much longer continued, and how fast it is gaining an ascendency over, and influencing the mind of this people. When we look back and see how openly slavery was denounced throughout the the original States, and how heartfelt was the grief manifested that it should be tolerated even for a moment, and that among slaveholders themselves, we are astonished such a change has already taken place.

[1] Elliot's Reports, vol. iii. p. 88.

Now men from all parts of the country are lifting up their voices in its favor; they would make the discussing of the subject actionable at common law, a fit subject to cause an open war, if the different States were independent nations, and an almost universal sanctioning of lynchings, insults, and contumely, if even discussions or conversation on the subject are to be allowed. If such a radical change as this has taken place when but about fifty years have passed over our nation, what must be expected should it be continued an hundred years longer, and that, if any one should then speak in derogation of what has most strangely been called the key-stone of the arch of our republic, he should be "hung without benefit of clergy?" Is there no danger it will be so? We now appeal to those who think there is no danger to be apprehended to our republican institutions, to our liberty, if this institution remains untouched. If it is not abolished by the strong arm of the law, or by our courts, or by the voluntary good sense or a sense of justice in every individual, may not the gag that has been so freely applied in congress eventually be made to apply to every person throughout our country? If there is danger that such may be the result, we hope the lullaby song of doctors of divinity, or a perverted priesthood, will not cause this community to slumber. The watchword of liberty is, be vigilant, be brave. Give neither "sleep to the eyes, nor slumber to the eyelids," till each one has done something to satisfy those around him that

they will not admit this enemy of peace to their embrace; that they will esteem it a scorpion; a viper, whose fangs are deadly, and whose breath is pollution. We hope and trust, as we have before remarked, that there are some of the descendants of such men, who, when the battle becomes fiercer, and their aid is required, will not be backward in showing their true colors. We know there are some, and we hope their numbers will be much greater than we can even anticipate, who have not bowed down to this golden calf, and who have not been deceived by the false show that it exhibits to a superficial observer. But, while we would rejoice at the stand made by some individuals at the South, let us not forget that, while they expressed themselves horrified at slavery in the abstract, yet they hugged with extreme pertinacity to the slaves they then held. How to get rid of them, how to lose their property, which they thought they held in slaves, they knew not; or shall we be less charitable, and set it down to their perversity, and say that all the arts and contrivances of which they were capable were put into requisition to secure to themselves the labor of the slave, while they would exhibit to the world a face on which no spot or wrinkle could be found?

South Carolina and Georgia wanted laborers: the white man could not work in their fields; and the people of that day could think of no way, by kind treatment, to induce the colored man to come to our shores; and, forsooth, they must permit his

forcible introduction, and by all the arts in their power attempt to cover up their meaning, so that it would require deep study to know what was meant by their acts. When men attempt to do wrong, how hard it is to be plain of speech! But was this so? It might have been with some; no doubt it was; and, by their persevering endeavors, they undoubtedly made the Constitution speak a different language than it would have done had the majority been able to have spoken as they wished. The subject in the Confederacy was manifestly out of the control of the people generally; in the Constitution, it was brought within the control of the people of the United States; and, being so, it was made a subject of congratulation, and they rejoiced they could point to a time when they thought slavery would be at an end; but, in the mean time, they seemed to be willing nothing should be done by the general government to disturb the relation of master and slave. They looked to the abrogation of the African slave-trade to put an end to slavery, as is shown by the observations of these gentlemen. But when we find the stopping of the foreign slave-trade has had no influence to destroy this system, but that it is more firmly fixed upon the country, what should be the course we should now pursue, if we mean to make this land a land of liberty? Evidently to take such steps, consistently with right, as will put a stop to its longer continuance; and the powers of the government, if the States will not do it when asked, should be put to the

utmost stretch effectively to secure to every individual his individual rights. This and this only can heal the wounds, so far as our government is concerned, that have been inflicted upon our land, and restore the Constitution to its true and legitimate meaning, and harmony to the different portions of our country.

But Mr. Iredell says expressly that the power of congress does not extend to the freeing the slaves then in the country; and perhaps there was then no specific power by which it could be done, excepting under the phrase "the general welfare;" but it must be remembered that amendments were made to that Constitution, which, if the language was not sufficiently plain in the original, the amendments made to it has effectually, and in as distinct language as could be used in such an instrument, secured to every individual his rights. The reason for bringing forward these amendments, or at least some of them, was well understood; and it was well known they meant to apply to the slave, if not by one portion of the country it was by the other; and all the amendments proposed were made to conform, as Mr. Madison expressed it, to one principle, that was of liberty: it would not answer to have "two opposing principles" in the same instrument.

It is to be remarked, how singular is the idea advanced by Mr. Galloway, and which we often hear expressed at this day: "If we set our slaves free, what shall we do with them?" and "we cannot live with them, if free;" as if the slave

could not take care of himself, and that there would be more danger and degradation in residing at the South among free colored people than among slaves. It seems to us strange how such notions — for this Mr. Galloway seems truly to entertain them — could ever enter the human mind. A person can live in contact, and in daily communication, with individuals, if they happen to hold certain relations, without one word of complaint; but, if they happen to hold certain other relations, then they are horrified at the very sight of them. Can this be sincere? We can conceive of nothing that can produce this effect, except that it is thought, by the persons who entertain these sentiments, the negro is a brute, or a savage, and requires the whip to keep him orderly. The general fact, however, that they are men, that they are rational beings, should be enough to refute this charge. Yet we need not depend upon this general considerations, but can refer directly to the experiment in the British West India Islands, as demonstrable proof that the colored man is as teachable, as ready to live in civilized society, as any other race on the globe; and consequently, if persons will look into the facts of the case, these fears, if they have been or are now *honestly* entertained, may no longer be so.

The whole of the observations that follow are worthy of special note, particularly as they come from North Carolina.

"Mr. Iredell said, I believe the passion for liberty is stronger in America than in any other country in the

world: here every man is strongly impressed with its importance, and every breast glows with ardor for the preservation of it. Every jealousy, not incompatible with the indispensable principles of government, is to be commended; but these principles *must at all events be observed.*" [1]

Mr. Spraight, in answer to a question put, — why was the restriction made in the first clause of the 9th section, — said, —

"There was a contest between the Northern and Southern States; that the Southern States, whose principal support depended on the labor of slaves, would not consent to the desire of the Northern States to exclude the importation of slaves absolutely; that South Carolina and Georgia insisted on this clause, as they were now in the want of hands to cultivate their lands; that, in the course of twenty years, they would be fully supplied; that the trade would be abolished then; and that, in the mean time, some tax or duty might be laid on." [2]

"Mr. McDowall replied, it was just such an explanation as he expected, and by no means satisfactory to him; and that he looked upon it as a very objectionable part of the system." [3]

Mr. Iredell rose to express sentiments similar to those of the gentleman from Cravan. "For my part, were it practicable to put an end to the importation of slaves immediately, it would give me the greatest pleasure; for it is certainly a trade utterly inconsistent with the rights of humanity, and under which great cruelties have been exercised. *When the entire abolition of slavery takes place, it will be an event that must be pleasing to every*

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[1] Elliot's Reports, vol. iii. p. 93.
[2] *Idem*, vol. iii. p. 96.
[3] *Idem*, vol. iii. p. 97.

generous mind, and every friend of human nature; but we often wish for things which are not attainable. It was the wish of a *great majority* of the convention to put an end to the trade immediately; but the States of South Carolina and Georgia would not agree to it. Consider, then, what would be the difference between our present situation in this respect, if we do not agree to the Constitution, and what it will be if we do agree to it. If we do not agree to it, do we remedy the evil? No, sir, we do not. For, if the Constitution be not adopted, it will be in the power of every State to *continue* it *forever.* They may or they may not abolish it, at their discretion. But, if we adopt the Constitution, the trade must cease after twenty years, if congress declare so, whether particular States please so or not: surely, then, we gain by it. This was the utmost that could be obtained. I heartily wish more could have been done. But, as it is, this government is *nobly* distinguished above others by that very provision. Where is there another country where such a restriction prevails? We therefore, sir, set an example of humanity, by providing for the abolition of this inhuman traffic, though at a distant period. I hope, therefore, this part of the Constitution will not be condemned because it has not stipulated for what was impracticable to obtain."[1]

Mr. Spraight further explained the clause:

"That the limitation of this trade for the term of twenty years was a compromise between the Eastern and Southern States. South Carolina and Georgia wished to extend the time. *The Eastern States insisted on the entire abolition of the trade.* That the State of North Carolina had not passed a law prohibiting the

[1] Elliot's Reports, vol. iii. p. 97.

importation of slaves, and therefore its delegates in the convention did not think themselves authorized to contend for an immediate prohibition of it."[1]

"Mr. Iredell added to what he had said before, that the States of South Carolina and Georgia had lost a great many slaves during the war, and that they wished to supply the loss."[2]

Mr. Galloway said "The explanation given to this clause does not satisfy my mind. *I wish to see this* ABOMINABLE TRADE *put an end to.* But, in case it be thought proper to continue this abominable traffic for twenty years, yet I do not wish to see the tax on the importation extended to all persons whatsoever. Our situation is different from the people to the North. We want citizens; they do not. Instead of laying a tax, we ought to give a bounty, to encourage foreigners to come among us. With respect to the abolition of slavery, it requires the utmost consideration. The property of the Southern States consists principally in slaves. If they mean to do away with slavery, this property will be destroyed. I apprehend it means to bring forward manumission. If we must manumit our slaves, what country shall we send them to? It is impossible for us to be happy if, after manumission, they are to stay among us."[3]

"Mr. Iredell said the worthy gentleman has misunderstood this clause, which runs in the following words: 'Migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the congress prior to the year 1808, but a tax, or duty, may be imposed on such *importation*, not exceeding ten dollars for each person.' Now, sir, ob-

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[1] Elliot's Reports, vol. iii. p. 97. [2] *Idem*, vol. iii. p. 98.
[3] *Idem*, vol. iii. p. 98.

serve that the Eastern States, who long ago have abolished slavery, did not approve of the expression *slaves;* they therefore used another that answered the same purpose. The committee will observe the distinction between the two words migration and importation. The first part of the clause will extend to people who come into the country as free people, or are brought as slaves; but the last part extends to slaves only. The word migration refers to free persons, but the word importation refers to slaves, because free people cannot be said to be imported. The tax, therefore, is only to be laid on slaves who are imported, and not on free persons who migrate. I further beg leave to say the person is mistaken in another thing. He seems to say that this extends to the abolition of slavery. Is there any thing in this Constitution which says that congress shall have it in their power to abolish the slavery of those slaves who are now in the country? Is it not the plain meaning of it, that after twenty years they may prevent the importation of slaves? It does not extend to those now in the country. There is another circumstance to be observed: there is no authority vested in congress to restrain the States, in the interval of twenty years, from doing what they please. If they wish to inhibit such importation, they may do so. Our next assembly may put an entire end to the importation of slaves." [1]

The rest of the 9th section, the reporter remarks, was read without any observations.

"Mr. Spencer said, I wish to have a bill of rights to secure those inalienable rights which are called by some respectable writers the residuum of human rights, which are never to be given up. At the same time that it

[1] Elliot's Reports, vol. iii. p. 98.

would give security to individuals it would add to the general strength." [1]

He objected, in this speech, to the powers of the Supreme Court, and to that clause which gives this court jurisdiction in cases of controversies between individuals of different States. On this subject he said, —

"Nothing can be more oppressive than the cognizance with respect to controversies between citizens of different States. In all cases of appeal, those persons who are able to pay had better pay down in the first instance, though it be unjust, than to be at such a dreadful expense by going such a distance to the Supreme Federal Court." [2]

He observed, some of the other "States had proposed amendments to this clause, and that he thought, by admitting this clause, it would render the country entirely unhappy" — "inconsistent to the happiness of the people to admit these two clauses. The State courts are sufficient to decide the common controversies of the people, without distressing them by being carried to such far distant tribunals."

Mr. Spraight said, in answer, there was no disagreement in the convention respecting these two clauses: he said the convention wished to separate as much as possible the judiciaries of the States and of the general government, and "consult the ease and convenience of the people. The gentleman objects to the cognizance of all cases in law and equity arising under the Constitution and the laws of the United States. This objection is very astonishing. When any government is established,

[1] Elliot's Reports, vol. iii. p. 127. [2] *Idem*, vol. iii. p. 127.

it ought to have power to enforce its laws, or else it might as well have no power: what but that is the use of a judiciary? The gentleman, from his profession, must know that no government can exist without a judiciary to enforce its laws, by distinguishing the disobedient from the rest of the people, and imposing sanctions for securing the execution of the laws." [1]

Mr. McDowall, speaking of the importance of having a jury trial secured to the people, and finding in *civil* cases it was not secured in the last resort, though in criminal cases it was, supposed a case of a man's going from Georgia to Philadelphia, there to have a suit tried, and then asked,—

"And can it be justly determined without the benefit of trial by jury? These are things which have justly alarmed the people. What made the people revolt from Great Britain? The trial by jury, that great safeguard of liberty, was taken away, and a stamp duty was laid upon them. This alarmed them, and led them to fear greater oppressions would take place." [2]

Mr. Spraight said, —

"The convention did not forget the trial by jury; the subject took up a considerable time to investigate it. It was impossible to make one uniform regulation for all the States, or that would include all cases where it would be necessary. It would be impossible for one expression to embrace the whole. There are a number of equity and maritime cases in some of the States, in which jury trials are not used. Had the convention said that all cases should be tried by a jury, equity and maritime

[1] Elliot's Reports, vol. iii. p. 128. [2] *Idem*, vol. iii. p. 131.

cases would have been included. It was therefore left to the legislature to say in what cases it should be used; and, as the trial by jury is in full force in the State courts, we have the fullest security."[1]

Mr. Iredell explained the cause of the jury trial being left as it was; congress does not say it shall or shall not be used; but, left the subject somewhat open to be governed by usage. He also explained why there was no bill of rights to the Constitution, and said, —

"With regard to a bill of rights, this is a notion originating in England, where no written Constitution is to be found, and the authority of their government is derived from the most remote antiquity: 'Magna Charta itself is no constitution, but a solemn instrument, ascertaining certain rights of individuals, by the legislature for the time being, and every article of which the legislature may at any time alter.' .... Our Constitution was different. Congress by it was given certain specific powers, and what was not given was reserved to the States or the *individual:* there could, therefore, be no general expression of rights.

"Had their constitution been fixed and certain, a bill of rights would have been useless; for the constitution would have shown plainly the extent of that authority which they were disputing about. Of what use can a bill of rights be in this Constitution, when the people expressly declare how much power they do give, and consequently retain all they do not? It is a declaration of particular powers by the people to their representatives, for particular purposes. It may be considered as a great power of attorney, under

[1] Elliot's Reports, vol. iii. p. 131.

which no power can be exercised but what is expressly given." [1]

Mr. Spencer, in the quotation that follows, thinks that congress has to do with the individual; he thought the Constitution ought to be amended so as to read that all that was not given up should be reserved to the States; then it would supersede the necessity of a bill of rights; otherwise there ought to be one; and then went on to say, —

"The States do not act in their political capacities, but the government is proposed for *individuals*. The very *caption* of the Constitution shows this to be the case. The expression 'we the people of the United States' shows this government is intended for individuals; there ought, then, to be a bill of rights. I am ready to acknowledge congress ought to have the power of executing its laws. Heretofore, because all the laws of the Confederation were binding on the States in their individual capacities, courts had nothing to do with them; *but now the thing is entirely different.* The laws of congress will be binding on individuals, and *those things which concern individuals will be brought properly before the courts.*" [2]

He then went on further to argue in favor of a bill of rights, in opposition to Mr. Iredell, and, as reasons, he said, —

"There are certain human rights that ought not to be given up, and which ought, in some manner, to be secure. With respect to these great essential rights, no latitude ought to be left. They are the most inestimable

[1] Elliot's Reports, vol. iii. p. 135. [2] *Idem*, vol. iii. p. 139.

gifts of the Creator, and therefore ought not to be destroyed, but ought to be secured. They ought to be secured to individuals in consideration of other rights which they give up to support society."

He also spoke of the trial by jury, and, among other observations, said, —

"Every person who is acquainted with the nature of liberty need not be informed of the importance of this trial. Juries are called the bulwarks of our rights and liberty; and no country can be enslaved so long as those cases which effect their lives and property are to be decided in a great measure by the consent of twelve honest, disinterested men, taken from the respectable body of yeomanry. It is highly improper that any clause which regards the security of the trial by jury should be in any way doubtful."

Further on he said, —

"I ask the gentleman what benefit would be received in the suit by having a jury trial in the court below, when the verdict is set aside in the Supreme Court." [1]

Mr. Davie spoke in answer to Mr. Spencer, and in favor of the Constitution as reported, and said, —

"That the powers of the judiciary should extend as far as legislation; that there was but two ways for government to carry its laws into effect, — one by the *sword*, the other by the *judiciary;* that the latter was to be preferred;" and, in conclusion, said, — "It is necessary that the Constitution should be carried into effect, that the laws should be executed, justice equally done to all in the community, and treaties observed. These ends

[1] Elliot's Reports, vol. iii. p 140.

can only be accomplished by a *general paramount judiciary*." [1]

Mr. Maclane, in answer to Mr. Spencer, said, —

"Can any security arise from declaring we have a right to what belongs to us? Where is the necessity for such a declaration? If we have this inherent, this unalienable, this indefeasible title to those rights, if they are not given up, are they not retained? If congress should make a law beyond the *powers* and the *spirit* of the Constitution, should we not say to congress, 'You have no authority to make this law. There are limits beyond which you cannot go. You cannot exceed the power prescribed by the Constitution. You are amenable to us for your conduct. This act is unconstitutional. We will disregard it, and punish you for the attempt.'" [2]

Mr. Spencer answered, —

"The gentleman last up misunderstood him. He did not object to the caption of the Constitution, but he instanced it to show that the United States were not, merely as States, the object of the Constitution; but that the laws of congress were to operate on *individuals*, and not upon States. He then continued,— I do not mean to contend that the laws of the general government should not *operate on individuals*. I before observed that this was necessary, as laws could not be put into execution against *States* without the agency of the *sword;* which, instead of answering the end of government, would *destroy* it. I endeavored to show that, as the government was not to operate against States, but against individuals, the rights of individuals ought to be properly secured. In order to constitute this security

[1] Elliot's Reports, vol. iii. p. 145. [2] *Idem*, vol. iii. p. 145.

it appears to me there ought to be such a clause in the Constitution as there was in the Confederation, expressly declaring that every power, jurisdiction, and right, which are not given up, remains with the States. Such a clause would render a bill of rights unnecessary. But, as there is no such clause, I contend that there should be a bill of rights, ascertaining and securing the great rights of the States and people."[1]

Observe this language. The government of the United States was not to operate on States, but on *individuals*. By this means, it avoids the clashing which might frequently take place between a superior and a subordinate government. The laws of congress operating upon the individual, and not upon the State, there is no danger of opposition, saving when a State undertakes to protect its people in their opposition to the laws of the general government, as was attempted to be done by South Carolina, in her nullification acts.

Congress, as is here conceded, has power over the individual; and, if so, we will ask, what were the rights contended for that he should retain? what were "the rights of the individual," which "ought to be property secured?" We know of none, saving those inalienable rights spoken of in the Declaration of Independence, and which Mr. Spencer thought ought to be secured by a bill of rights, or, what he thought would amount to the same thing, "a clause in the Constitution, as there was in the Confederation, expressly declaring every power, jurisdiction, and

[1] Elliot's Reports, vol. iii. p. 147.

right, which are not given up, remains with the States;" or, as he in another place adds, that, as the security of these rights in the Confederation remained with the States, under the Constitution they would remain with the people. As the 10th article of the amendments embraces the idea as expressed by Mr. Spencer, we do not perceive how the conclusion can be avoided, that these inalienable rights, of which the Declaration of Independence speaks, are fairly and properly secured to the people. We have, therefore, only to suppose the negro a man, and one of the people, — and in what other light can he be considered? — and the conclusion is inevitable: he is a freeman, and the Constitution guarantees to him his freedom.

This 10th article of the amendments to the Constitution has a great deal of meaning to it, — more, we suspect, than usually meets the eye. It was one of those amendments brought forward in the Massachusetts convention, to answer the objections made by different members of that convention, that, in their adoption of the Constitution, they might not be made to consent to barter away the rights of the State or the individual rights of any *man*. Such being the fact, aré not all laws that have been made by congress or the States — if any have been made having in view the personal subjection of one man to another, without the consent of that other — against not only the spirit, but the very letter, of the Constitution? A higher tribunal than ourself must decide.

Mr. Iredell observed, "The honorable gentleman said it was very extraordinary that the convention should not have taken the trouble to make an addition of five or six lines, to secure the trial by jury in civil cases. Sir, if, by the addition, not only of five or six lines, but of five or six hundred lines, this invaluable object could have been secured, I should have thought the convention criminal in omitting it; and, instead of meriting the thanks of their country, as I think they now do, they might justly have met with resentment and indignation. I am persuaded the omission arose from the real difficulties of the case."[1]

He thought the gentleman could not point out how it could have been done under the circumstances. Different States had different laws. "*Union was absolutely necessary.* Every thing could be agreed upon, except the regulation of trial by jury in civil cases. They were all anxious to establish it on the best footing, but found they could fix upon no permanent rule that was not liable to great objections and difficulties. As the convention could not agree among themselves, they concluded the States would not." They therefore left the subject for legislation, supposing it would be safe in the hands of the representatives of the people. But they had secured a trial by jury in criminal cases; this being so, is it possible a man can be punished in the United States without crime? and, if he commits a crime, must he not have a jury trial before punishment? Those who make an assertion in the affirmative are bound

[1] Elliot's Reports, vol. iii. p. 148.

to show that, under this article in the Constitution, it can be done.

Mr. Bloodworth observed, "The answer of the gentleman did not convince him. He saw no reason why they did not secure a jury trial in civil cases as well as in criminal; and there being different laws in different States did not produce in his mind any satisfactory reasons; that there were as different laws in one case as in the other." "If it has been possible to secure it in criminal cases, notwithstanding the diversity concerning it, why has it not been possible to secure it in civil cases? I wish this to be cleared up. By its not being provided for, it is expressly provided *against.* I still see a necessity for a bill of rights."[1]

Mr. Iredell answered these objections by saying that, in different States, "admiralty and equity cases"[2] were decided without jury, and it was thought these States would not agree to alter their course; that the great means for tyranny was by criminal prosecutions, and therefore congress had guarded this point, and he thought there could be no danger.

Mr. Iredell, speaking of the last clause of the 4th section, said, —

"He begged leave to explain this clause. In some of the Northern States, they had emancipated their slaves. If any of our slaves go there, and remain there a certain time, they would, by the present laws, be entitled to their freedom, so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the Southern States; and, to prevent it, this clause is in-

[1] Elliot's Reports, vol. iii. p. 150. [2] *Idem*, vol. iii. p. 152.

serted in the Constitution. Though the word slave is not mentioned, this is the meaning of it. The northern delegates, owing to their particular scruples upon the subject of slavery, did not choose the word *slave* to be mentioned."[1]

It is to be remarked here, although this clause is so curiously worded, no further remarks were made by any gentleman in this convention: the whole article, saving these few observations by Mr. Iredell, were passed over (so says the reporter) without any other comments.

It will be observed, by the comments of the same gentleman, it was South Carolina and Georgia alone that prevented the slave-trade from being totally abolished at the time of the adoption of the Constitution. Not one in the convention of North Carolina seem to have said one word in favor of slavery or the trade; an ominous silence was preserved.

It was also supposed by Mr. Iredell the time had not arrived when a discussion could be had without too much irritation. Has greater "coolness" settled on the American people since that time, in regard to this subject? We think not; but, on the contrary, the difficulties that surround it increases with our increase, and strengthens with our strength. So far from being any more prepared for relinquishing our hold on the slave, we are going backward; a portion of our people are less inclined than ever to give up their claim. Can we, however, afford to wait any longer be-

[1] Elliot's Reports, vol. iii. p. 157.

fore something should be done? Our own opinion is, the American people must settle the question now, whether they will make slavery one of the settled institutions of the land, and alter all their ideas as to the beneficial effects of slavery, and now determine to call it a good, and have it extended throughout the country; so that our laborious farmers, our mechanics, and the persons who work in our factories must consent not only to be called slaves, but be so in fact, or else these persons must arouse themselves from their stupor, and stoutly determine no slavery shall exist at the South. There is no alternative. One or the other must be done. A general consent, on the part of the working classes, to become slaves, or a general determination on their part to expel the accursed system from the land. It should be well for all parties to understand — though this should make no difference — slavery in the United States is not now confined to the colored population, although it may be confined to the descendants, in part, of the colored race; but slavery itself is not confined to the black skin, and the question now is, whether slavery shall be extended over the North as well as over the South? Will the American people answer this question in the affirmative? for this truly is now the question. Let it be determined that slavery is a blessing, and to be continued in any part of the country, and there is no reason it should not be universally diffused. Why not extend the blessing? why not bring it to the North, if it really be a blessing?

Mr. Iredell, speaking of the power to make amendments to the Constitution, alluded to the fact that congress could not break up the slave-trade till 1808, and said, —

"The subject of this article was regulated with great difficulty, and by a spirit of concession, which it would not be prudent to disturb for a good many years. In twenty years there will probably be a great alteration, and then the subject may be considered with less difficulty and greater coolness. In the mean time the compromise was upon the best footing that could be obtained. A compromise likewise took place in regard to the importation of slaves. It is probable all the members reprobated this inhuman traffic, but those of South Carolina and Georgia would not consent to an immediate prohibition of it; one reason of which was, that during the last war they *lost* a vast number of negroes, which loss they wish to supply. In the mean time it is left to the States to admit or prohibit the importation, and congress may impose a limited duty upon it." [1]

Mr. Lenoir, speaking upon the general subject of adopting the Constitution, said, —

"I think it not proper for our adoption, as I consider it endangers our liberties." [2]

"If there were any security for the liberty of the people, I would, for my own part, agree to it. But, in this case, as millions yet unborn are concerned, and deeply interested in our decision, I would have the most positive and pointed security." [3]

In answer to the objection urged by Mr. Lenoir,

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[1] Elliot's Reports, vol. iii. p. 158.
[2] *Idem*, vol. iii. p. 177.
[3] *Idem*, vol. iii. p. 181.

Mr. Spraight, who was a member of the convention that proposed the Constitution, said, —

"I am, for my part, conscious of having had nothing in view but the liberty and happiness of my country, and I believe every member of that convention was actuated by motives equally sincere and patriotic." [1]

Mr. Iredell said, in speaking of the object of government, —

"The great principle is, the *safety of the people is the supreme law.* Government was originally instituted for their welfare, and, whatever may be its forms, this ought to be its object. This is the *fundamental principle on which our government was founded.* In other countries they suppose an original compact, and infer that, if the sovereign violates his part of it, the people have a right to resist." [2]

On the conclusion of the discussion in the committee of the whole, they reported the following resolution, namely:

"*Resolved*, That a declaration of rights, asserting and securing the great principles of civil and religious liberty, and the inalienable rights of the people, together with amendments to the most exceptionable and ambiguous parts of the said Constitution of government, ought to be laid before congress and the convention of the States that shall or may be called for the purpose of amending the said Constitution, for their consideration, previous to the ratification of the Constitution aforesaid, on the part of the State of North Carolina." [3]

The amendments which this State proposed

[1] Elliot's Reports, vol. iii. p. 182. [2] *Idem*, vol. iii. p. 200.
[3] *Idem*, vol. iii. p. 210.

were the same as those proposed by the State of Virginia, the 1st, 3d, and 16th, speaking of the natural rights of the people without any qualifications. The 9th, 10th, 11th, 12th, 14th, 15th, and 18th, introduces the term "freeman" in the same manner as those of Virginia. In fact, Mr. Willie Jones said he copied them from Virginia, as, on reference to Mr. Elliot's Reports, they will be found to be.

They proposed twenty-six amendments to the Constitution; all for the purpose of laying restrictions on the general powers of congress.

The proposed Constitution was rejected by a vote of 184 to 84.

The result of this vote was owing, so far as we can judge in reading over the debates, and the apparent holding back of certain members of this convention, to the fear that slavery would be abolished by this Constitution. They did not want to trust it. Certain persons, though they do not appear to have said much, yet from the little we can glean from what there is reported, were decidedly opposed to its adoption, and, from the first, were ready to vote on the whole Constitution, and go home and tell their constituents they had put their veto on it. It was, however, discussed, and we have given the result of that discussion, so far as relates to the subject under consideration.

The same observations will apply here that applied to the Virginia amendments, a part of which were adopted by congress and ratified by the States, a material word, however, being first

struck out. We allude to the word "freeman;" being in, it would have confined the benefits to be conferred by the Constitution to the then freemen of the United States and their descendants; but, being stricken out, it left the benefits to be conferred upon all the people without distinction, whatever may have been their color or their race; and, consequently, if the South, including even Virginia and North Carolina, did mean to retain the slaves they had in their possession, the other portions of the country did not mean they should.

We have seen what Massachusetts said, and these resolutions, without the word "freeman," being more explicit even than her own, she, with the other States, took these amendments, after striking out the word "freeman," and engrafted them on the Constitution, together with the substance of her own. Whatever, then, may have been the Constitution, or whatever may have been the ideas respecting slavery and its continuance, held by the delegates who proposed it, they amount to but little, when we find the people would not sanction it without its being so amended that every individual, "whether living on the banks of the Mississippi" or "on the margin of the Kennebec," whether he be white or black, bond or free, should not be subjected to punishment for any crime, or supposed one, without a trial by jury; or "be seized in his person, papers, or effects," without a legal sanction; or that it should be considered he consented, in the least degree, his inalienable rights should be given up: these

were retained; they did not mean to relinquish them. If we are correct — and we think we are — a person who is guilty of violating the Constitution in these particulars makes himself liable, before our courts, for violations of the principles of the Constitution. A colored man, or a slave, cannot be restrained in servitude without his own consent, and the pretended authority of the master is utterly null and void: this instrument takes from him all authority.

There were, however, in this convention, as our quotations show, many who feared the Constitution would have a bad effect on the general liberties of the country, and, on that account, gave their vote against it, — men who either threw out of all consideration the colored man, and meant to have the most enlarged liberty for themselves, or else were willing he should be considered of their number, and therefore voted against it because their rights or his were not sufficiently guarded. The feeling in this convention was undoubtedly strong, both for and against slavery; quite a number, however, spoke as if the feeling against it was strong throughout the State, while those in its favor said little, as is now their wont.

CHAPTER XI.

EXTRACTS FROM THE OBSERVATIONS MADE IN THE CONVENTION OF PENNSYLVANIA.

It would appear, from Mr. Elliot's Reports, that, with the single exception of a few observations made by Mr. McKean, no one is reported to have said any thing, saving Mr. James Wilson, of Philadelphia, a gentleman who had attended the national convention, and who, it appears, undertook to explain the reasons which induced that body to adopt the Constitution, as recommended; and, after answering the various questions and objections which, by his answers, are supposed must have been made, this convention adopted the Constitution without any amendments being proposed for after consideration.

Mr. Wilson began by saying, —

"As I am the only member of that body who has the honor to be also a member of this, it may be expected of me that I should prepare the way for the deliberations of this assembly, by unfolding the difficulties which the late convention were obliged to encounter, by pointing out the end which they propose to accomplish, and by tracing the general principles which they have adopted for the accomplishment of that end.

"To form a good system of government for a single

city or State, however limited as to territory, or inconsiderable as to numbers, has been thought to require the strongest efforts of human genius. With what conscious diffidence, then, must the members of the convention have revolved within their minds the immense undertaking which was before them! Their views could not be confined to a small or single community, but were expanded to a great number of States, several of which contain an extent of territory, and resources of population, equal to those of some of the most respectable kingdoms on the other side of the Atlantic. Nor were even these to be the only objects to be comprehended within their deliberations. Numerous States yet unformed, myriads of the human race who will inhabit regions yet uncultivated, were to be effected by the result of their proceedings. It was necessary, therefore, to form their calculations on a scale commensurate to a large portion of the globe.

"For my own part, I have been lost in astonishment at the vastness of the prospect before us. To open the navigation of a single river was lately thought in Europe an enterprise adequate to imperial glory. But could the commercial scenes of the Scheldt be compared with those that, under a good government, will be exhibited on the Hudson, the Delaware, the Potomac, and the numerous other rivers that water and are intended to enrich the dominions of the United States?"[1]

Taking this enlarged view of the subject, and preparing the minds of his audience to learn that the foundations of the government, with all due consideration, were to be laid, not only for the generation then on the stage of action, but "mil-

[1] Elliot's Reports, vol. iii. p. 224.

lions yet unborn;" that they were laying the foundation of a government that was to have a bearing on many future generations, and that amid all the jarring interests that had exhibited themselves in the convention, yet, among them all, there was a "keen sense of freedom and independence," and this sense heightened by the "glorious" result of the "late struggle they had passed through;"—it would, it must, have produced an unequivocal condemnation in every honest mind in the assembly if he had, in the course of his remarks, given any intimation that, by adoption of that instrument, slavery which is, and always was, in direct opposition to a "keen sense of liberty," should be by that instrument guaranteed to the South, perpetually fastened on the country, and that the people of his State would be liable, ever after, to be called on to fight in opposition to these principles, and that the "main object"[1] for which they were called together was to devise ways and means by which slavery could be maintained and perpetuated on this continent. We opine, if such a statement had been made at that day, before any one of the northern conventions, Pennsylvania and the other northern States would have indignantly refused its adoption; they certainly could have done nothing less. But, as slavery existed, and there was an interest manifested to have it continued a little while

[1] Mr. Duncan, of Ohio, in his speech made in the house of representatives in 1840, and which was printed and widely circulated by the party to which he is attached, made an observation to this effect.

longer, this, together with other supposed difficulties, prevented their immediate action, or, rather, they thought they had gained a point; for, while in the Confederation, they could have none other than a moral right to prevent its continuance, in the Union they would have a legislative right to interfere, in addition to the moral. But, in combining and reconciling the jarring interest, either real or supposed, conciliation and forbearance was thought necessary to be practised, where the "springs of opposition were so numerous and strong," and the difference of the "temper and disposition" was so great. He then says, —

"The citizens of the United States, however different in other respects, are well known to agree in one strongly marked feature of their character, — a warm and keen sense of *freedom and independence.* This sense has been heightened by the glorious results of the late struggle against all the efforts of one of the most powerful nations of Europe. It was apprehended, I believe, by some, that a people so high spirited, would ill brook the restraints of an efficient government. I confess this consideration did not influence my conduct." He then observed, "He did, and thought his constituents would uphold him in giving his vote for what, upon the best consideration he could give, he thought was the right, not what might be most agreeable."

We quote the following passage, not because of its direct bearing on the subject under discussion — though it may have in some remote degree — but because it shows, in some measure, the opinions entertained at that time of all governments, and

because the question has been for the second time started in this country, that there should be no human government.[1]

"Permit me to add, in this place, that the science of even government itself seems yet to be almost in a state of infancy. Governments in general have been the result of force, of fraud, and of accident. After a period of six thousand years has elapsed since the creation, the United States exhibit to the world the first instance, so far as we can learn, of a nation unattacked by external force, unconvulsed by domestic insurrections, assembling voluntarily, deliberating fully, and deciding calmly, concerning that system of government under which they would wish that they and their posterity should live."[2]

But, if slavery was to be guaranteed to the South, and the ignorance of the unenlightened African was to be taken advantage of, and he made, in consequence of it, to be the "hewer of wood and drawer of water" for an indefinite number of ages, how shall the men of that day escape the charge of founding a government, at least for the colored man, on force, on fraud, and on accident? Those better acquainted with metaphysics than we are must answer, if they can reconcile justice with the present system of slavery.

After speaking of the various kinds of govern-

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[1] We here allude to the discussion on this subject now going on, and to the Rev. Mr. Eliot, the Indian missionary of the State of Massachusetts, who put forth a pamphlet denying the authority of human governments, but by persuasion was induced to suppress it.

[2] Elliot's Reports, vol. iii. p. 227.

ments that had existed, and the kind best suited to the United States, he said, —

"The principles and disposition of their citizens indicate that, in this government, *liberty* shall reign *triumphant*. Such, indeed, have been the general opinions entertained since the era of independence. If those opinions and wishes have been as well founded as they have been general, the late convention have been *justified* in proposing to their constituents *one* confederate republic as the best system for a national government for the United States." [1]

And again he says, —

"We have remarked, civil government is necessary to the perfection of society. We now remark that civil liberty is necessary to the perfection of civil government. Civil liberty is natural liberty itself, divested of only that part which, placed in the government, produces more good and happiness to the community than if it had remained in the individual. Hence it follows that civil liberty, while it resigns a part of natural liberty, retains the free and generous exercise of all the human faculties, so far as is compatible with the public welfare." [2]

What civil liberty has the slave, or even the colored man, in this country? None whatever. But some may answer, the public welfare requires the slave to be kept in bondage, and the colored man to be spurned from all *good* society; that it is even dangerous to grant him his *inalienable* rights; that, to preserve the liberty for which we have suffered so much, slavery must yet be continued, the colored man must yet be under tutelage; that

[1] Elliot's Reports, vol. iii. p. 231. [2] *Idem*, vol. iii. p. 232.

he has yet to learn what is meant by true freedom; that, in his present state of ignorance, he is incapable of sustaining the principles of free government; and, consequently, that his, as well as the white man's, happiness is enhanced by having him continued, as it is said, in "his place,"—continued as a servant, or as a slave; and that, being incapable of attaining to a just sense of true liberty, it is necessary to keep him under the restraints which the peculiar institution of slavery affords. These are grave assertions, and perhaps should be answered with gravity; and, in doing so, we must simply refer the reader to the time when this same race was the centre and seat of civilization, long before we have any records of a white race at all; and the ruins of ancient cities, that are now found in Ethiopia, attest to their ability; and nothing but an opportunity to display their talents is probably now wanting to show their equality with any other people: in fact, if the researches of antiquarians are correct, and it is true the island of Great Britain was settled by a colony from Tyre, we can trace our own descent directly to the Ethiopian.

But Mr. Wilson continues:

"In considering and developing the nature and end of the system before us, it is necessary to mention another kind of liberty, which has not yet, as far as I know, received a name. I shall distinguish it by the appellation of *federal liberty*. When a single government is instituted, the individuals of which it is composed surrender to it a part of their natural independence, which they before enjoyed as men. When a confeder-

ate republic is instituted, the communities of which it is composed surrender to it a part of their political independence, which they before enjoyed as States. The principles which directed in the former case — what part of the natural liberty ought to be given up, and what part ought to be retained — will give similar directions in the *latter case.* The States should resign to the national government that part, and that part only, of their political liberty which, placed in that government, will produce more good to the whole than if it had remained in the several States: while they resign this part of their political liberty, they retain the free and generous exercise of all their other faculties as States, so far as is compatible with the welfare of the general and superintending confederacy." [1]

Speaking of the inadequacy of the Confederation to secure the objects proposed in the foregoing statements, and observing while no foreign power had been able to overpower them, yet, for the want of a government sufficiently strong to restrain the States, they were "devoid" "of national power," "of national importance," "of national credit," "of national dignity," "of national energy," so that they could not carry into execution their own resolutions, decisions, or laws, — he then goes on to say, —

"Under these impressions, and with these views, was the late convention appointed; and under these impressions, and with these views, the late convention met.

"We now see the great end which they propose to accomplish. It was to frame, for the consideration of

[1] Elliot's Reports, vol. iii. p. 232.

their constituents, one federal and national Constitution, — a Constitution that would produce the advantages of the *good*, and prevent the inconvenience of bad government, — a Constitution whose beneficence and energy would pervade the whole Union, and bind and embrace the interest of every part, — a Constitution that would insure peace, *freedom*, and happiness to the States and *people* of America."[1]

Be it remarked, he does not say here that it was to the Northern or Southern States alone, or that it was to the black or white people alone ; but to the people, whether white or black, within the borders of the government, without there being any distinction as to classes.

In the foregoing observations we perceive the true nature of our government ; we live not under a confederated republic, under *federal liberty* merely, but under a government formed for the purpose of securing liberty to the States and to *individuals*, in order to secure the general welfare of the whole. When, therefore, the whole, or any one, of these objects are not attained, and the liberty of the individual, or of the States, is not secured, and, consequently, the welfare of the whole is not procured, then the purposes for which this Constitution, this league, this compact, this ordinance, or whatever else it may be called, is not brought about: it is diverted from its original purpose, and is no longer binding on any ; and, if ever our courts decide these objects are not obtained by our Constitution, then do we believe that instrument has been made

[1] Elliot's Reports, vol. iii. p. 234.

in vain, and the population of these United States and the world at large have been most egregiously deceived, and that it is time for another general convention to be holden to amend it, and cause, if human government can secure them, our most important rights to be secured, or else the hope of the world, in regard to the American Constitution, is lost forever. The books that have been written upon this subject have of late all indicated a change to be anticipated, respecting our feelings and dispositions, on the subject of reducing to and keeping a portion of our population in slavery, and which clearly indicate that this question must be settled, if we do not wish the whole intent and policy of our fathers to be frustrated; and our land, instead of being the land of the free, the virtuous, and the moral, will become the land of the slave, the dissolute, and the weak, given over to licentiousness and to utter destruction.

Will the people of the United States sanction this perversion? will they countenance the doctrine that our community must be divided into classes, each having its "appropriate sphere" pointed out to it, and made but a machine in the body politic? This question is to be answered by the people of America; and let not the white laborer at the North foolishly imagine that, by riveting the chains on the colored man at the South, they are not fastening them on their own limbs. Let us again tell them, if they will believe us, their interest is one and inseparable with that of the slave; and, if they give their

sanction to that institution, they are but sealing their own fate: they themselves must be prepared to receive the galling yoke. Slavery, if it is allowed to be continued at all, will not feel as if it should be confined within metes and bounds. If it is a good and a blessing at the South, what should prevent its being such at the North? Such will be the arguments; and, if they are correct, the consequence must follow. Arouse, then, freemen of the North, while ye may! Shake off the shackles, and spurn the slaveholder's whip! Give him assurances that you will have no fellowship with him, that you desire not his company, and wish he may not come into your assemblies!

But Mr. Wilson continues, —

"It is urged, as a general objection to this system, that the powers of congress are unlimited and undefined, and that they will 'be judges, in all cases, of what is necessary and proper for them to do.' To bring this subject to your view, I need no more than to point to the words in the Constitution, beginning at the 8th section, article 1st: 'The congress [it says] shall have power,' &c. I need not read the whole of the words, but I leave it to every gentleman to say whether the powers are not as accurately defined as can be well done on the same subject, in the same language. The old Constitution is as strongly marked on this subject; and even the concluding clause, with which so much fault has been found, gives no more or other powers, nor does it in any degree go beyond the particular enumeration; for, where it is said that congress shall have power to make all laws which shall be necessary and proper, these words are limited and

defined by the following, 'for carrying into execution the foregoing powers.'[1] It is saying no more than that the powers we have already particularly given shall be effectually carried into execution."[2]

After speaking of the manner that electors were to be chosen, he says, —

"This being made the criterion of the right of suffrage, it is consequently secured, because the same Constitution *guarantees* to every State of the Union a *republican* form of government. The right of suffrage is fundamental to republics.

"Sir, there is another principle that I beg leave to mention, — *representation and direct taxation*, under this Constitution, are to be according to numbers."[3]

How has this proved? Why, the North has had to pay the greater proportion of this tax: it has not fallen upon numbers at all. The slave, as we have said, uses but few foreign goods, while the freeman uses the most that are imported, and consequently pays the expenses of government.

"I recollect, on a former day, the honorable gentleman from Westmoreland, [Mr. Finley,] and the honorable gentleman from Cumberland, [Mr. Whitehall,] took exception against the first clause of the 9th section, article 1st. Arguing very unfairly that, because congress might impose a tax or duty of ten dollars on the importation of slaves within any of the United States, congress might therefore permit slaves to be *imported within this State*, contrary to its laws, I confess I little thought this system would be objected to.

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[1] See remarks on the powers of congress on page 196.

[2] Elliot's Reports, vol. iii. p. 263. [3] *Idem*, vol. iii. p. 274.

"I am sorry it could be extended no further; but, so far as it operates, it presents us with the *pleasing prospect* that the rights of man will be *acknowledged and established throughout the Union.*

"If there was no other *lovely feature* but this one, it would diffuse a beauty over its whole countenance. Yet, the lapse of a few years! and *congress will have power to exterminate slavery from within our borders!*

"How would such a delightful prospect expand the breast of a benevolent and philanthropic European! Would he cavil at an expression? catch at a phrase? No, sir; that is reserved for the gentlemen on the other side of your chair to do. What would be the exultation of that great man [Gen. Washington] whose name I have just now mentioned, we may learn from the following sentiments on this subject: they cannot be expressed so well as in his own words:

"'The colonies of France contain, as we have seen, near five hundred thousand slaves; and it is from the number of these wretches that the inhabitants set a value upon their plantations. What a fatal prospect, and how profound a subject for reflection! Alas! how inconsequent we are, both in our morality and our principles! We preach up humanity, and yet go every year to bind in chains twenty thousand natives of Africa! We call the Moors barbarians and ruffians, because they attack the liberty of Europeans at the risk of their own; yet these Europeans go without danger, and as mere speculators, to purchase slaves, by gratifying the cupidity of their masters, and excite all those bloody scenes which are usually the preliminaries of such traffic. In short, we pride ourselves on the superiority of man, and it is with reason we discover this superiority in the wonderful and mysterious unfolding of the intellectual faculties; and yet the trifling difference in the hair of the head,

or in the color of the epidermis, is sufficient to change our respect into contempt, and to engage us to place beings like ourselves in the rank of those animals devoid of reason, whom we subject to the yoke, that we may make use of their strength and of their instincts at command.

"'I am sensible, and I grieve at it, that these reflections, which others have made much better than me, are unfortunately of very little use! The necessity of supporting sovereign power has its peculiar laws, and the wealth of nations is one of the foundations of this power: thus the sovereign who should be the most thoroughly convinced of what is due to humanity would not singly renounce the service of slaves in his colonies: time alone could furnish a population of free persons to replace them; and the great difference that would exist in the price of labor would give so great an advantage to the nation that should adhere to the old custom, that the others would soon be discouraged in wishing to be more virtuous. And yet would it be a chimerical project to propose a general compact, by which all of the European nations should unanimously agree to abandon the traffic in African slaves? They would in that case find themselves exactly in the same proportion relative to each other as at present; for it is only on comparative riches that the calculations of power are founded.

"'We cannot as yet indulge such hopes: statesmen in general think that every common idea must be a low one; and, since the morals of private people stand in need of being curbed and maintained by the laws, we ought not to wonder if these sovereigns conform to their independence.

"'The time may nevertheless arrive when, fatigued with that ambition that agitates them, and of the continued rotation of the same anxieties and the same plans,

they may turn their views to the great principles of humanity; and, if the *present* generation is to be witness of this happy revolution, they may at least be allowed to be unanimous in offering up their vows for the perfection of the social virtues, and for the progress of public beneficial institutions.' These are the enlarged sentiments of that great man." [1]

Our southern people can here observe the views that Washington entertained on the subject of slavery and the slave-trade, and of the power that government would have over them; for he speaks of the time when there might be a congress of nations to relieve themselves of the anxieties that pressed upon them, and that they would turn their attention "to the great principles of humanity." It is evident that Washington looked upon slavery and its kindred vices with repugnance, and the only difficulty with him was how to get rid of them. He does not seem to entertain the idea of individual action in the case as a sufficient remedy: he wanted legislative action. He does not appear to entertain any fears as to the result, so far as safety to the community was involved, but only the great difference that would exist in the price of labor; and so long as that difference was maintained, and the morals of the community needed restraint, different governments would think they ought to retain the slave. Yet he hoped the time might come when they, by general consent, would turn their attention to the "great principles of humanity," instead, as he

[1] Elliot's Reports, vol. iii. p. 276.

leads us to infer, to that of oppressing their fellow-men; and it is with these views he seems to have entered upon his office as president of the United States. Whether he ever exerted himself to bring about such a state as he here suggested, we are unable to say.

Mr. Wilson, it will be observed, assured the convention of Pennsylvania that congress would have full power to extirpate slavery throughout the country; and that it was a very great argument with him in favor of its adoption; and he did it because some persons in the convention were ready to reject it on the ground that they supposed congress might introduce slavery into the State in opposition to its laws, which they did not wish to have done, and they were assured it could not be done.

From the foregoing observations of Mr. Wilson, we find that the State of Pennsylvania came into the Union with the express understanding that congress might, and probably would, abolish slavery throughout the United States, and that it was expected it would soon be done; and Mr. Wilson introduced Washington's observations to satisfy the convention that he was in favor of such a course.

In pursuing the discussion he burst out in this exclamation, —

"Happy America! thy crisis was indeed alarming, but thy situation was not desperate. We had confidence in our country, though, on which ever side we turned, we were presented with scenes of distress. Though the jarring interests of the various States, and the different

habits and inclination of their inhabitants, all lay in the way, and rendered our prospect gloomy and discouraging indeed, yet such were the generous and mutual sacrifices offered up, that, amidst forty-two members, who represented twelve of the United States, there were only three who did not attest the instrument as a confirmation of its goodness; happy Pennsylvania! this plan has been laid before thy citizens for consideration; they have sent delegates to express their view; and listen, with rapture listen!! from only three has opposition been heard against it."[1]

On the same page he says, —

"We were told, some days ago, by the honorable gentleman from Westmoreland, [Mr. Finley,] when speaking of this system and its objects, that the convention no doubt thought they were forming a compact, or contract, of the greatest importance. Sir, I confess I was much surprised, at so late a state of the debate, to hear such principles maintained. It was matter of surprise to hear the great leading principles of this system were still so very much misunderstood. 'The convention no doubt thought they were forming a contract!' I cannot answer for what every member thought; but I believe it cannot be said that they thought they were making a contract, because I cannot discern the *least trace of a compact* in that system. There can be no compact unless there are more parties than one. It is a new doctrine that one can make a compact with himself. 'The convention were forming *compacts!*' with whom? I *know of no bargains that were made then.* I am unable to conceive who the parties could be. The *State governments* make a bargain with one another; that is the

[1] Elliot's Reports, vol. iii. p. 286.

doctrine that is endeavored to be established by gentlemen in opposition; their State sovereignties wish to be represented! But far other were the ideas of the convention, and *far other* were those conveyed in the system itself.

"As this subject has been often mentioned, and as often misunderstood, it may be proper to take some farther notice of it. This, Mr. President, is not a government founded on *compact;* it is founded on the power of the *people.* They express in their name and authority, '*We the people do ordain and establish,*' &c. from their ratification alone it is to take its constitutional authority; without that, it is no more than a *tabula rusa.*"

Such, then, were Mr. Wilson's opinions respecting this famous compact, and so much of it did Pennsylvania know about it, when she gave her assent to our present Constitution!

"I have already shown that this system is not a compact, or contract; the system itself tells you what it is; it is an ordinance and an establishment of the people. I think the force of the *introduction* to the work must, by this time, have been felt. It is *not an unmeaning* flourish. The expressions declare, in a *practical manner*, the *principles of this Constitution.* It is ordained and established by the people themselves, and we who give our votes for it are merely the proxies of our constituents. We sign it as their attorneys, and, as to ourselves, we agree to it as individuals."[1]

Speaking of the kind of government meant to be established by the convention upon its being asserted that an aristocracy was meant to be formed, he says, —

[1] Elliot's Reports, vol. iii. p. 288.

"The late convention was assembled to devise some plan for the security, safety, and the *happiness of the people* of the United States; if they have devised a plan that robs them of their power, and constitutes an aristocracy, they are the parricides of their country, and ought to be punished as such. What part of the system is it that warrants the charge?

"What is an aristocratic government? I had the honor of giving a definition of it at the beginning of our debates: it is, sir, the government of the *few* over the *many*, elected by themselves, or possessing a share in the government by inheritance, or in consequence of territorial rights, or some quality independent of the choice of the people, — this is an aristocracy; and this Constitution is said to be an aristocratical form of government; and it is also said that it is intended so to be by the members themselves of the late convention who framed it."[1]

After asking "what peculiar rights have been reserved to any class of men, on any occasion;" or whether even the "chief magistrate of the United States enjoyed any privilege that was not extended to *every individual of the country;*" whether the offices were not open to "all," whether "poor or rich;" whether there was any "*distinction*" between the inhabitants of the "city" or "country;" whether the places of honor or emolument were confined to the few, or to the members of the late convention, &c. &c. he says, —

"Far, far other is the genius of this system; I have already had the honor of mentioning its general nature,

[1] Elliot's Reports, vol. iii. p. 307.

but I will repeat it, sir; *in its principles it is purely democratical*, but its parts are calculated in such a manner as to obtain those advantages, also, which are peculiar to the other forms of governments in other countries," &c.

But if the system of slavery was to be guaranteed to any portion of the land, would there not have been an aristocracy of the most hateful kind? would not the many be subjected to the few? But, as Mr. Wilson declares, such was not the intention of the convention: it must have been presumed by the people of Pennsylvania this was not to be the case, and that no one was to have a share in the government by inheritance. When, then, we find, as is now the case, one class of persons has the sole control of the government deposited in their hands, and another doomed to abject bondage, deprived of all participation not only in civil government, but even the government of themselves, — we ask, with all candor, can any thing be a greater perversion of the intent and meaning, as Mr. Wilson construed the Constitution, than is expressed in the idea that slavery is guaranteed to the South? or, as Mr. Duncan of Ohio has lately expressed it, that the maintenance of slavery was the principal cause for the adoption of the Constitution? and he, too, a professed republican! It must be answered, such could not have been intended; and one cannot help exclaiming, on reading such language from such sources, O, the inconsistency of man! how good, how bad, how wise, how foolish!

We will simply add, let it be remarked that the preamble to the Constitution was declared not to be an "unmeaning flourish," but that it was, in a "practical manner, the principle of this Constitution."

He closes the arguments he had used for the adoption of the Constitution with the following words:

"Permit me to offer one consideration more that ought to induce our acceptance of this system. I feel myself lost in contemplation of its magnitude. By adopting this system we shall probably lay a foundation for erecting temples of liberty in every part of the earth. It has been thought by many, that on the success of the struggle America has made for freedom will depend the exertions of the brave and enlightened of other nations. The advantages resulting from this system will not be confined to the United States; it will draw from Europe many worthy characters who pant for the enjoyment of freedom. It will induce princes, in order to preserve their subjects, to restore them a portion of that liberty of which they have for so many ages been deprived. It will be subservient to the great designs of Providence with regard to this globe, the multiplication of mankind, their improvement in knowledge, and their advancement in happiness."[1]

May we not here appeal to the South, if they yet lay any claim to virtue or honor, or if the institution of slavery has not already blinded their eyes and stopped their ears, to reflect on the horrid, the abominable idea of perpetuating a system

[1] Elliot's Reports, vol. iii. p. 312.

which every good man, even among themselves, deplores, and pronounces injurious to their own, as well as the welfare of the slave, — and not to perpetuate to future generations such a system, and cause the whole design of making this land the land of freedom to be given up, that the withering curse of slavery may be fastened upon it? We ask them, in all candor, in all kindness, to prevent such an occurrence, and in their national dignity help proclaim to the world America is yet determined to be free, not only in word, but in deed also; and that they will no longer belie (for we must view their present position such) the principles of our Declaration of Independence, the Constitution of our country, and the object for which it was formed.

Mr. McKean, after stating, among other things, that the convention had been three weeks in hearing objections, went into an enumeration of them; among others we find the following:

"That migration or importation of such persons as any of the States shall admit, shall not be prohibited prior to 1808, nor a tax or duty imposed on such importation exceeding ten dollars for each person." [1]

"That it was a consolidation of the States, and not a confederacy. That it is an aristocracy, and was intended to be so by the framers of it."

After briefly answering these objections, and saying with regard to the introduction of slaves, "Provision is made that congress shall have power

[1] Elliot's Reports, vol. iii. p. 312.

to prohibit the importation of slaves after the year 1808," [1] he says, —

"But the gentlemen in opposition accuse this system of a crime, because it was not prohibited by them at once. I suspect these gentlemen are not acquainted with the business of the diplomatic body, or they would know that an argument might be made that did not perfectly accord with the will or pleasure of any one person. Instead of finding fault with what has been gained, I am happy to see a disposition in the United States to do so much."

He closes his remarks with these words:

"Upon the whole, sir, the law has been my study from my infancy, and my only profession. I have gone through the circle of office, in the legislature, executive, and judicial departments of government, and, from all my study, observation, and experience, I must declare that, from a full examination and due consideration of the system, it appears to be *the best the world has yet seen.*

"I congratulate you upon the fair prospect of its being adopted, and I am happy in the expectation of seeing accomplished what has been long my ardent wish, that you will hereafter have a salutary permanency in majestracy and stability in the laws." [2]

These ideas might have been realized at this time, so far as we can judge, were it not for slavery. It is to this alone we can attribute the mobs, the lynchings, and the use of the bowie knife. These have been so generally made use of at the South, we are led to inquire where, south of

[1] Elliot's Reports, vol. iii. p. 318. [2] *Idem*, vol. iii. p. 322.

the Potomac, has the majesty of the laws been at all maintained, if the question of slavery has been in the most remote degree involved? There is no law for the slave, or him who desires his freedom: both are beyond the protection of law; and, so far as they are concerned, the majesty of the country is but a broken reed; and, if a man should attempt to lean on it, he would be pierced through as with a dart. The universal expression is, there is no trust to them; and yet this is called a land of liberty and of laws. In such a state of things can any thing be more untrue? it is neither one nor the other. The slave is restrained because it is said he is born a slave; the white man, because he must not question such violation of every thing that is just and true, honorable, or of good report. And, consequently, we find in all the arguments brought forward to sustain the system — if arguments there are any — a most confused mixture of truth and falsehood, and such an attempt to blend liberty and slavery, that perfect nonsense, or the blending the meaning of words, is the only result; or else we come off like the platter in Mother Goose's Melodies, wiped perfectly clean:

"Jack Sprat could eat no fat,
His wife could eat no lean;
And so betwixt them both
They wiped the platter clean."

It is thus with the rights of both the white and colored man: the South will not endure the slave should possess any, and the people at the North cannot endure the white man should open his lips

to assert he has any; and so, forsooth, for the mess of pottage which it is supposed can be wrung out of the hard earnings of the slave, this whole land, this whole continent, must be delivered over into the hands of despotism; and that beautiful and satisfactory idea, that men, as a body, can govern themselves, and by the light of reason, which as a lamp is placed within the breast of every one, guided by the Spirit of God, is enough to show them in their path, and direct them in the way they should go, must give place to the horrible one that man requires a keeper; that by his Creator a large portion, at least, are made incapable of taking care of themselves, and, in consequence, there must be lords, there must be masters. Are the people of America ready to sanction this doctrine? Are they ready, after passing through the severe struggle they have, now to lay down their arms and submit unresistingly to the chains that are ready to be forged for their limbs? Do they mean to give up the contest, and recline in inglorious ease, and let the man be swallowed up in the brute? If so, let slavery be continued; let our Constitution and the Declaration of Independence be blotted from the records of the nation; let us proclaim to the world we are a debased people; that all we have heretofore said upon the subject of liberty was but a "rhetorical flourish," unmeaning sounds, and spoken only to deceive; that we all had ulterior views. It was not the good of man we sought; it was not for him we contended; but, rather, that our own selfishness might be

gratified, and that we might have increased opportunity to lord it over our brother man.

We do not yet believe the American people have so far descended in the scale of degradation that they will sanction the proceeding of those at the South who yet hold slaves, or those at the North who encourage them in it. But, rather, that they will come out and assert the purity of their motives, and in all their tribunals they will speak a voice on the side of freedom that shall not be misunderstood.

CHAPTER XII.

EXTRACTS FROM MR. WIRT'S LIFE OF PATRICK HENRY.

In making these, and perhaps in some of our other extracts, we have not strictly followed the precise language, though we have, in all cases, we believe, kept strictly to the idea. We have advanced no thought that was not in the mind of the writer or speaker. We should have had to copy so much from this work, had we used in all cases the language of Mr. Wirt or Mr. Henry, — though the language of both is extremely interesting, and is well worth perusing by every one, — it would have swelled our own volume beyond what might be desirable. As we have, however, made our references when the language is the most closely followed, we hope those who are sensitive on this point will excuse us for any departure we have allowed ourselves in this particular.

In making the following extracts, we are aware it may involve us in some repetition; but, as they help to elucidate our subject, and to show the thoughts and feelings of one of the most distinguished men of the age in which he lived, the anxiety he felt for the liberties of the country, and the jealousy with which he received the adoption of the present Constitution of the United States,

in the bearing it might have on those liberties, we have concluded to make them.

As we are now entering upon an era either for good or for ill, as the question of slavery may be decided in this country, and upon that decision the happiness of millions, perhaps for many generations, may be involved, all the light that can be thrown upon this discussion, and the thoughts of those who have taken an interest in this subject, and particularly of those who have taken an active part in bringing about a state of society such as that in which we are at present living, should be fairly laid before the community, that they may be able to decide and to judge how far that light should be followed, and wherein the judgment of our predecessors was governed by truth and right reason.

There can be no doubt we should at times follow an *ignis fatuus*, if we should attempt blindly to follow any one individual in all his imaginings; but yet perhaps we may be able to learn something even from the incoherent wanderings of a dreamer. There is beauty in the flower, though we sometimes crush it beneath our feet; and we, perhaps, should be surprised at the delicacy of its tints and outlines, were we to take more particular notice of its parts, the order and perfection of its arrangements. Nothing is to be looked upon with indifference. A single thought has produced revolutions, and may yet produce many more.

The United States may be considered as advancing to a state of manhood. In their child-

hood and their youth, they may have suffered much, or they may have wandered, through ignorance, or otherwise, from the path which leads to that liberty for which they all appeared to be anxiously striving. They may have made many mistakes and many blunders; but the object which they meant to obtain was kept constantly in view: and now the question is fairly placed before us, will we pursue that object, and secure now, in our greater strength and our advancing light, that liberty which each is anxious to obtain for himself, and which our fathers have given us for our inheritance? or shall we turn around and say we will no longer follow the instructions of our fathers, but, on the contrary, pursue a course that will reduce a good portion of our people to a state of bondage, and, instead of that equality which they introduced in all their *public* proceedings, have orders and classes in society where a part, whether they will or no, shall do the bidding of the other? These, we think, are the questions now before the American people; and on that decision our future destiny hangs. Not only our political and civil relations will be affected by it, but Christianity is involved. It will be idle for us to pretend to carry out the command to "Do unto others as we would have them do unto us," when slavery shall be the established law of the land, when we shall have determined to make brutes of all persons we can get within our power. We may say, even, we give up our hopes of immortality, and deny our responsibility to our God,

when such shall be our settled determinations. For what must be the thoughts and satisfaction of that man, when, in a future state, he meets with those he has abused and shamefully entreated while on earth, if he believes his God has commanded him to do otherwise? Will he continue to act in opposition to those commands? We think not; and, if we are correct, the conclusion must be, that the settled determination to continue slavery involves not only the destruction of our liberties, both civil and religious, but our Christianity, and our hopes of an immortality. We are infidels; we are reduced to the level with the brute; we are superior to them only as we have greater reasoning powers; our hopes and expectations of a future life are laid prostrate in the dust; slaveholding is atheism carried into practice.

These thoughts may be considered somewhat out of place, as an introduction to the quotations that follow; and yet we do not think them wholly so. The reader, however, will be able to judge. But, without keeping him in further suspense, we will make the following extracts from the resolutions of the Virginia assembly in 1765, concerning the stamp act, a copy of which was found among the papers of Patrick Henry, sealed, to be opened, after his death, by his executor:

"That, by two royal charters, granted by king James the First, the colonies aforesaid are declared entitled to all the privileges, and liberties, and immunities of denizens and natural born subjects, to all intents and pur-

poses, as if they had been abiding and born within the realm of England."[1]

There were three other resolutions, which referred to taxation, — one declaring where the power laid, viz. that the "taxation of the people by themselves" "is the distinguishing characteristic of British freedom;" another, that it was invested in the people; and another, that the colonies had enjoyed the right of taxing themselves, and that they had not forfeited that right, and that to invest it in any other would destroy "British as well as American freedom." After stating the causes which induced him to offer these resolutions, and the effect they had on the universal resistance of British taxation, and the separation of the two countries, he concludes his remarks by saying, —

"Whether this will prove a blessing or a curse, will depend upon the use our people make of the blessings which a gracious God hath bestowed upon us. If they are wise, they will be great and happy. If they are of a contrary character, they will be miserable. Righteousness alone can exalt them as a nation. Reader! whoever thou art, practise virtue thyself, and encourage it in others. P. HENRY."

Immediately after the promulgation of what was called the Boston port bill, the house of burgess in Virginia recommended, on the 29th of May, 1774, that a convention of the States should be called, to take into consideration the general interest that the colonies should from time to time require; and,

[1] Wirt's Life of Patrick Henry, p. 74.

to give effect to this recommendation, delegates were shortly after chosen, to meet at Williamsburg; among other purposes, to appoint deputies to the general congress. John Symmes and Patrick Henry were chosen; and in the instructions given them by the assembly, what subjects they wished them to deliberate upon, the following was one:

"The African trade for slaves we consider the most dangerous to the virtue and welfare of this country. We therefore wish to see it totally discouraged."[1]

After the war, the question arose, as to the propriety of allowing the return of the British refugees. Mr. Henry favored their return, in opposition to the views then generally held, and was successful in convincing the house of delegates of its propriety. He spoke of the vastness of the country, its prospects, and the need there was for inhabitants, and the necessity there was for encouraging emigration, and of making "this country the home of the skilful, the industrious, the fortunate and happy, as well as the asylum of the distressed," so that, finally, the country may be able "to take care of itself."

"Do you ask how you are to get them? Open your doors, sir, and they will come in. The population of the old world is full to overflowing. That population is ground, too, by the oppression of the governments under which they live. Sir, they are already standing on tiptoe upon their native shores, and looking to your coasts

[1] Wirt's Life of Patrick Henry, p. 118.

with a wishful and longing eye; they see here a land blessed with natural and political advantages which are not equaled by those of any other country upon earth, — a land on which a gracious Providence hath emptied the horn of abundance, — a land on which peace hath now stretched her white wings, and where content and plenty lie down at every door! Sir, they see something still more attractive than all this; they see a land in which LIBERTY hath taken up her abode, — that liberty whom they had considered as a fabled goddess, existing only in the fancies of poets, — they see her here as a real divinity, her altars rising on every hand throughout these happy States, her glories chanted by three millions of tongues, and the whole region smiling under her blessed influence. Sir, let but this celestial goddess, LIBERTY, stretch forth her fair hand towards the people of the old world, tell them to come, and bid them welcome, and you will see them pouring in from the north, from the south, from the east, and from the west; your wildernesses will be cleared and settled, your deserts will smile, your ranks will be filled, and you will soon be in a condition to defy the powers of any adversary."[1]

He felt no fears of any danger arising from the return of the British refugees. But do these people of the old world now go to the Southern States, when they find that slavery is there? or do they not, as has been observed in the house of delegates of Virginia within a few years, avoid them as they would a pestilence? And how can it be otherwise? They come, as Mr. Henry said they would, in search of liberty, and they are not to be mocked when they get here, by going

[1] Wirt's Life of Patrick Henry, p. 252.

into our Southern States: they have seen oppression enough in the old world, and, when they come here, they are able to distinguish the beast, though it is covered up by the name of the patriarchal institution. Will Virginia always force these people from her borders?

Lafayette, who had been to France, and returned in 1784, went to Williamsburg, in Virginia, while the house of delegates was in session. Patrick Henry with others were a committee to address him. In answer to their address, Lafayette makes use of this language, in speaking of the position of Virginia:

"May her fertile soil rapidly increase her wealth; may all the waters which so luxuriantly flow within her limits be happy channels of the most extensive trade; and may she, in her wisdom, and in the enjoyment of prosperity, continue to give the world *unquestionable* proof of her philanthropy and her regard for the liberties of *all mankind*."[1]

When the adoption of the Constitution was under discussion, Patrick Henry, it appears, opposed it. He saw in it, as he thought, the seeds of a mighty monarchy, and that it would eventually be perverted to favor despotism. He thought the Confederation was sufficient for all the purposes of freedom and self-government; he saw no danger from the state of things at that time, and he thought the delegates to the convention had extended their instructions, and, instead of making

[1] Wirt's Life of Patrick Henry, p. 266.

a confederation of the States, they had made a consolidated government. And he significantly asked what right they had to say "we the people," instead of "we the States." If the States are not the agents of the compact, it must be one great consolidated national government of the people of all the States. The people gave them no power to use their name:

"The federal convention ought to have amended the old *system;* for this purpose they were solely delegated. He then asks why it was they made the proposed change in the government? Mr. Randolph and Mr. Lee answered, and thought Mr. Henry had appealed to the fears of the members of the assembly, and objected to the course, and wished the house to decide according to their judgment, and not to alarm.

"Mr. Henry answered, when he asked the questions he did, he thought his meaning was obvious. The fate of America might depend upon them. Have they said we the States? If they had, this would be a confederation; it is most clearly obvious a consolidated government. The whole question turns on that poor little *thing*, the expression 'We the people,' instead of States of America."[1]

"He then proceeded to set forth in terrible array his various objections to the Constitution; not confining himself to the clause under debate, but ranging through the whole of it, as the objections followed each other in his mind." In this discussion he was opposed by "Mr. Pendleton, Mr. Wythe, Mr. Madison, Mr. Marshall, Mr. Nicholas,

[1] Wirt's Life of Patrick Henry, p. 284.

Mr. Randolph, Mr. Innes, Mr. Henry Lee, and Mr. Corbin ; " but, although opposed by such " fearful odds," he continued the discussion for twenty days, with but three auxiliaries.

" The objection that the Constitution *substituted* a consolidated in lieu of a confederated government, and that this new consolidated government threatened the total annihilation of the State sovereignties, was pressed by him with the most masterly power. He said there was no necessity for the change of government so entire and fundamental, and no inducement to it, unless it was to be found in this *splendid government*, which, we were told, was to make us a great and mighty people. ' We have no details,' said he, ' of these great considerations, which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a revolution as radical as that which separated us from Great Britain. It is as radical, if in this transition our rights and privileges are endangered, and the sovereignty of the States be relinquished ; — and *cannot we plainly see that this is actually the case ?* The rights of conscience, trial by jury, liberty of the press, all of our immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change, so loudly talked of by some, and so inconsiderately by others. Is this tame relinquishment of rights worthy of freemen ? Is it worthy of that manly fortitude that ought to characterize republicans ? " .... " You are not to inquire how your trade may be increased, nor how you are to become a *great and powerful people*, but how your liberties can be secured ; for *liberty* ought to be the direct end of your government. Is it necessary for your liberties that you should abandon these great rights, by the adoption of this system ? " ...

"Liberty, the greatest of all earthly blessings, — *give us that precious jewel, and you may take every thing else.*" .... "Perhaps an invincible attachment to the dearest rights of man may, in these *refined, enlightened days*, be *deemed old-fashioned:* if so, I am contented to be so. I say the time has been when every pulse of my heart beat for American liberty, and which I believe had a counterpart in the breast of every true American." [1]

After stating his patriotism was suspected, and it had been declared on the opposite side those suspicions were groundless, he says, —

"Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. *Unfortunately nothing will preserve it but downright force: whenever you give up that force, you are inevitably ruined.* I am answered by gentlemen, that, though I might speak of terrors, yet the fact was, we were surrounded by none of the dangers I apprehended. I conceive this new government to be one of those dangers: it has produced those horrors which distress many of our best citizens. We are come hither to preserve the poor commonwealth of Virginia, if it can be possibly done: something must be done to preserve your liberty and mine. The confederation, this same despised government, merits, in my opinion, the highest encomium: it carried us through a long and dangerous war, — it rendered us victorious in that bloody conflict with a powerful nation, — it has secured us a territory greater than any European monarch possesses, — and shall a government that has been thus strong and vigorous be accused of imbecility, and abandoned for the want of

[1] Wirt's Life of Patrick Henry, p. 288.

energy? Consider what you are about to do before you part with this government. Take longer time in reckoning things. Revolutions like this have happened in almost every country in Europe; similar examples are to be found in ancient Greece and ancient Rome, — instances of people losing their liberty by their own carelessness and the ambition of a few. We are cautioned by the gentleman who presided against faction and turbulence. I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge that the new form of government may *effectually* prevent it. Yet there is another thing it will as effectually do: it will oppress and ruin the people. There are sufficient guards placed against faction and licentiousness; for, where power is given to this government to suppress these, or for any other purpose, the language it assumes is clear, express, and unequivocal; but, when this Constitution speaks of privileges, there is an ambiguity, sir, — a fatal ambiguity, which is very astonishing."[1]

It had been urged it would increase the military strength of the country; and, if the convention rose without adopting the instrument, "disunion and anarchy would be the consequence:" in answer to them he said, —

"Happy will you be, if you miss the fate of those nations who, omitting to resist their oppressors, or negligently suffered their liberty to be wrested from them, have groaned under intolerable despotism! Most of the human race are now in this condition. And those nations who have gone in search of *grandeur*, *power*, and *splendor*, have also fallen a sacrifice, and been the victims of their

[1] Wirt's Life of Patrick Henry, p. 290.

own folly. While they have acquired those visionary blessings, they have lost their freedom."[1]

In alluding to the strength which the power of the militia would give the government, he said, "*This acquisition will trample on your fallen liberties!*"[2] He wanted his "beloved Americans" to be guarded against such lethargy; and he asked, where was there any danger now? "Other gentlemen have told us, within these walls, that the union is gone, or that the union will be gone. Is not this trifling with the judgment of their fellow-citizens? Till they tell us the ground of their fears, I will consider them as imaginary." He thought he could appeal to the patriotism of the American people with perfect safety; and observed how completely they had been submissive to the laws throughout its struggle. There was no danger from Europe, and he thought he could trust the American spirit, and that the dangers they apprehended were all ideal.

He objected to the mode of amending the Constitution; he thought a majority of the people ought to have the power of making amendments, as they should judge most conducive to the public weal, as it had been set forth in the Virginia bill of rights; but, as the Constitution was, one tenth part of the people could prevent any amendment. He called it a contemptible minority, and contrary to the spirit of democracy; and if "gentlemen standing on this ground have come to that point, — are

[1] Wirt's Life of Patrick Henry, p. 291. [2] *Idem*, p. 292.

willing to bind themselves and their posterity to be oppressed," — he "was amazed and inexpressibly astonished!" It appeared to him perilous and destructive; and, if thus left, their liberties are gone forever. He alluded to the practice of bribing in England; but observed that "English liberty is on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one tenth of the people to any alterations, however judicious." It had been said it was in the power of the people to assemble in convention, and recall their delegated power, and punish their servants. He ridiculed this idea.

"*O, sir, we should have fine times indeed, if, to punish tyrants, it was only necessary to assemble the people!* Your own arms wherewith you could defend yourselves are gone, and you have no longer an aristocratical or democratical spirit!" . . . "You read a riot act in one of the freest countries in the world, where a few neighbors cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America. A standing army we shall have, also, to execute the commands of tyranny, [*we hope this prophecy will not be fulfilled;*] and how are we to punish them? Will you *order them to be punished? Who shall obey these orders? Will your mace-bearer be a match for a disciplined regiment? In what situation are we to be?* The clause before you gives the power of direct taxation unbounded and unlimited; exclusive power of legislating in all cases whatsoever for the ten miles square, and over all places purchased for the erection of forts, magazines, arsenals, dock-yards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this

country in the hands of your enemies; those garrisons will be the strongest places in the country. Your militia is given up to congress, also, in another part of the plan; they will therefore act as they think proper; all power will be in their own possession; you cannot force them to receive their punishment."

"He continued to ridicule the expected splendor of the new government, and the other imaginary checks and balances which were said to exist in this Constitution. If we admit, said he, this consolidated government, it will be because we like a splendid one. Some way or other we must have a great and mighty empire. We must have an army, and a navy, and a number of other things! When the American spirit was in its youth, the language of America was different. Liberty was the primary object. And, again, this Constitution is said to have *beautiful* features. When I come to examine these features, sir, they appear to be *horribly frightful. Among other deformities, it has an awful squinting;* it squints towards monarchy. And does not this raise indignation in the heart of every true American?"

He then goes on to say how it could be done, and that we must not always depend on having good men in office; and he asked where there was ever a country which had depended on such a chance, that had not lost their liberties? He then shows how the president may make himself king; and, with his power, it could be done; and then what will become of your rights? and upon this danger it is said he became so eloquent the reporter could not follow him in his flights.

He then summed up the chief objections to the Constitution under the following heads:

"1. That it was a consolidated instead of a confederated government; that the delegates of Philadelphia had transcended the limits of their commission; changed fundamentally the relation which the States chose to bear to each other; annihilated their respective sovereignties; destroyed the barriers which divided them, and converted the whole into a solid empire. To this leading objection almost all the rest had reference, and were urged principally with the view to illustrate and enforce it.

"2. The vast and alarming array of specific powers given to the general government, and the wide door opened for the unlimited extension of those powers, by the clause which authorized congress to pass all *laws necessary to carry the given powers into effect.* It was urged that this clause rendered the previous specification of powers an idle illusion, since, by the form of construction arising from that clause, congress might do any thing and every thing it chose, under the pretext of giving effect to some specific power.

"3. The unlimited power of taxation of all kinds. The States were no longer required, in their federative character, to contribute their respective proportions toward the expenses and engagements of the general government. It authorized congress to go to the pockets of every man in the country;" and he thought that, over so vast acountry, taxes by the general government could not be regulated in such a manner as would be equal, or would be submitted to. "It was resolved, he saw clearly, that we must be a great and spendid people; and, in order to be so, immense revenues must be raised from the people; the people were to be loaded down with taxes, direct and indirect, and a swarm of federal tax-gatherers were to cover this land, to blight every blade of grass, and

every leaf of vegetation, and to consume its productions for the enrichment of themselves and their masters, &c.

"4. The power of raising armies and building navies, and, still more, the control given to the general government over the militia of the States, was most strenuously opposed. This country, whose best policy was peace, was to be saddled with the expense of maintaining standing armies for no other purpose than to insult her citizens, to afford a pretext for increased taxes, and an augmented public debt; and, finally, to subvert the liberties of the people. Her militia, too, the last remaining defence, was gone," and he asked Mr. Madison candidly to tell him, "when and where did freedom exist when the sword and purse were given up from the people? Unless a miracle in human affairs shall interfere, no nation ever did, or ever can, retain its liberty after the loss of the sword and the purse, &c.

"5. He objected to the judiciary system, and the power of congress of multiplying inferior courts, — a power he thought they would not fail to exercise, in order to swell the patronage of the president to their own emolument, &c.

"6. He contended the trial by jury was gone in civil cases, and in criminal ones it was worse than gone. In the first place, because the Supreme Court had appellate power over the law and the facts in every case, and which thereby enabled that tribunal to annihilate both the verdict and judgment of the inferior courts; and that in criminal cases, also, the trial by jury was worse than gone, because it was admitted that the common law, which alone gives the challenge for favor, would not be in force as to the federal courts; and hence a jury might in every instance be packed to suit the purposes of prosecution.

"7. The authority of the president to take command of the armies of the United States, &c.

"8. The cession of the whole treaty-making power to the president and senate was considered one of the most formidable features in the instrument." He thought the lower house ought to be included.

"9. The immense patronage of the president was objected to.

"10. The irresponsibility of the whole gang of federal officers [as they were called] was found fault with. He considered the power of impeachment that was pretended to be given in some instances was mere show and mockery.

"11. It was insisted, if we must adopt a Constitution, ceding away such vast powers, expressed and implied, and so fraught with danger to the liberties of the people, it ought at least to be guarded by a bill of rights; that, in all free governments, and in the estimation of all men attached to liberty, there were certain rights inalienable and imprescriptible, and of so sacred a character that they could not be guarded with too much caution. Among these were the liberty of speech and of the press: what security have we that these sacred privileges shall not be invaded? Congress might think it necessary, to carry into effect the given powers, to silence the clamors and censures of the people; and, if they meditated views of LAWLESS AMBITION, they certainly will so think. What, then, will become of *liberty of speech and of the press*?

"Several objections of a *minor* character were urged, such as,—

"1. The ambiguity with which the directions for publishing the proceedings of congress was expressed, &c.

"2. That the 9th section of the 1st article, professing to set out restrictions upon the power of congress, gave

them, by irresistible implication, the sovereign power over all subjects not excepted, and thus enlarged the constructive power *ad infinitum.*

"3. *That congress had the power of involving the Southern States in all the horrors which would result from the total emancipation of their slaves; and that the Northern States, uninterested in the consequences of such an act, had a controlling majority which possessed the power, and would not probably want the inclination, to effect it.*

"4. That the pay of the members was to be fixed by themselves."[1]

He made these, together with many other objections, and, in reply to Mr. Madison and Mr. Corbin, who said the "Constitution was of a mixed nature;" "it is in a manner unprecedented; we cannot find one express example in the experience of the world; it stands by itself; in some respects it is a government of a federal nature; in others it is of a consolidated nature;" "it was a *representative federal government,* as contradistinguished from a confederation,"—he said,—

"This government is so new it wants a name! I wish its other novelties were as harmless as this. We are told, however, that, *collectively taken*, it is without example! that it is national in this part, and federal in that part, &c. We may be amused, if we please, by a treatise of *political anatomy.* In the brain it is national; *the stamina are federal; some limbs are federal, others national.* The senators are voted for by the State legislatures; *so far it is federal.* Individuals choose the members of the first branch; here it is national. It is *federal* in conferring federal powers, but national in re-

[1] Wirt's Life of Patrick Henry, pp. 299—305.

straining them. It is not to be supported by the States; the pockets of the people are to be searched for its maintenance. What signifies it to me *that you have the most curious anatomical description of it in its creation?* To all common purposes of legislation it is a great consolidated *government.* You have not a right to legislate but in trivial cases; you are not to touch private contracts; you are not to have the right of having your armies in your own defence; you are not to be *trusted with dealing out justice between man and man.* What shall the States have to do? to take care of the poor, repair and make highways, erect bridges, and so on, and so on! Abolish the State legislatures at once. What purposes should they be continued for? Our *legislature will indeed be a curious spectacle; one hundred and eighty men marching in solemn farcical procession, exhibiting a mournful proof of the lost liberties of their country,* without the power of restoring it. But, sir, we have the consolation, that it is a mixed government! that is, it may work sorely in your necks, but you will have some comfort by saying that it was a federal government in its origin!"[1]

Mr. Henry, however, did not depend on ridicule to prevent the adoption of the Constitution, and he acknowledged the talent that was opposed to him. Mr. Wirt observes, before this Mr. Henry's eloquence had appeared in occasional flights, but, during this discussion, every power of his mind was put in requisition, and, in the great competition of talents, Mr. Henry's powers of debate shone preëminent. It was nearly at the conclusion of this debate when that celebrated incident occurred, in which the members of the convention

[1] Wirt's Life of Patrick Henry, p. 306.

rose without the formality of an adjournment; the members rushing from their seats with precipitation and confusion, being unable to witness the scene. The time approached when the question was about to be taken on the adoption of the Constitution, and there was some doubt what would be the result. Taking advantage of the excitement that prevailed, —

He "made an appeal, which, in point of sublimity, has never been surpassed in any age or country of the world. After describing, in accents which spoke to the soul, and to which every other bosom deeply responded, the awful immensity of the question to the present and future generations, and the thrilling apprehensions with which he looked to the issue, he passed from the house, from the earth, and looking, as he said, 'beyond the horizon that binds mortal eyes,' he pointed, with a countenance and action that made the blood run back upon the aching heart, to those celestial beings who were hovering over the scene, and waiting with anxiety for a decision which involved the happiness or misery of more than half of the human race. To those beings — with the same thrilling look and action — he had just addressed an invocation that made every nerve shudder with supernatural horror, when, lo! a storm at that instant arose, which shook the whole building, and the spirits whom he had called seemed to come at his bidding. Nor did his eloquence or the storm immediately cease; but, availing himself of the incident, with a master's art he seemed to mix in the fight of his ethereal auxiliaries, and, rising on the wings of the tempest, to seize upon the artillery of heaven, and direct its fiercest thunders against the heads of his adversaries."[1]

[1] Wirt's Life of Patrick Henry, p. 313.

"But all his efforts were in vain. Either the justice of the opposing cause, or the power of his adversaries, or the prejudged opinions or instructions of the members, rendered his reasoning and his eloquence equally unavailing. Out of a house of 168 members, the ratification was carried by a majority of 10."[1]

He closed his last speech with the following remarks:

"I beg pardon of this house for taking up more time than came to my share; and I thank them for the patience and polite attention with which I have been heard. If I be in a minority, I shall have the painful sensations which arise from the conviction of being overpowered in a good cause. Yet I will be a peaceable citizen! My head, my hand, and my heart shall be free to retrieve the loss of liberty, and remove the defects of that system in a *constitutional way*. I wish not to go to violence, but will wait with hopes that the spirit which predominated in the Revolution is not yet gone, nor the cause of those who are attached to the Revolution yet lost. I shall, therefore, patiently wait, in expectation of seeing that government changed, so as to be compatible with the safety, liberty, and happiness of the people."[2]

If Mr. Henry had lived in these days, and seen the subserviency of all classes of people to the slave power, we cannot but suppose he would have thought the free spirit which pervaded the land in the days of our Revolution had entirely left us, and that our people had become too debased to be reckoned among free nations. This power, as we have seen, early began to show it-

[1] Wirt's Life of Patrick Henry, p. 314. [2] *Idem*, p. 314.

self, and had its influence even over Mr. Henry; and, while he and the Virginia convention were exerting themselves to secure liberty to their own race, the principles of the revolution had already been so far lost upon them that they were then willing to engraft the system of slavery upon the country, as will be perceived by the resolutions they proposed. It will be noticed, however, that these amendments, that Virginia proposed, secured to the individual "freeman" nearly all the rights for which Mr. Henry had so powerfully contended, and probably it was through his influence they were brought about. We shall soon see how those amendments were treated by the congress who took them under consideration, and what amendments were proposed and adopted by them.

Mr. Henry, it would appear, had perfect confidence in the power of the Anglo-Saxon race for self-government; but, for some reason or other, he did not have the same confidence in the African race: why it was so we are not able to say, unless it arose from early education. We all know how hard it is to throw off the impressions of our childhood, and how difficult it is to suppose that any practices to which we have been accustomed are wrong, let them be of what nature they may; and it is to this alone we can ascribe the course Mr. Henry took on the subject of slavery. It is difficult to explain how a man so conscientious, and so jealous of his own and others' rights, when those others were not connected with the African race, could take such an exception to this

people, and particularly when he lamented with so much feeling the cruelties practised upon them in the operation of the slave-trade. We can account for it in no other way than that he let his selfishness get the better of his judgment, or, that the early habits of his youth, and of those around him, and the assertion so falsely and yet so perseveringly made, that the negro, if free, would be a savage, or that he could not take care of himself, or that the general liberty of the country would be endangered, had such a powerful hold on his mind he could not be convinced to the contrary by his own better thoughts, or by the suggestions of others.

CHAPTER XIII.

EXTRACTS FROM PROCEEDINGS OF CONGRESS ON THE ADOPTION OF THE AMENDMENTS.

The following extracts were taken from the Massachusetts Centinel, published in 1789 and 1790. They comprise some observations made by Washington on his accession to the presidency, the views of the Constitution held by some of the courts, and the proceedings of congress on the subject of the amendments.

It will be perceived the judges of the courts of New York and Pennsylvania referred directly to the preamble of the Constitution as the basis on which the government was to be founded, and they refer to it as with jealous care; and one of them reminds the distinguished man who was to take charge of the government that such was the view they should take of the purpose for which the new Constitution was formed.

Washington acknowledges the principle, and says "he should feel himself singularly happy in contributing to realize the glorious work." And yet how has that "glorious work" been realized? Has justice, the general welfare, the liberty of themselves, or their posterity, been realized? or is

there not at this present time as many, if not more, absolute slaves in the country than there were freemen then? Instead of slavery being considered a curse, as it should be, the attempt has been made to make us believe it was a blessing,[1] — a god, to which all must bow down, or else be crushed beneath the wheels of the avenging deity. Can any man expect or dare hope for an office, of either trust or emolument, under our government, without first acknowledging the supremacy of this inexorable god? Must they not cringe and kiss his toe before they can be taken into favor? and then, forsooth, when this is done, they may be very devils, and they are changed into angels of light, deserving the highest consideration and the rewards of the highest honesty and intellect; or, at least, they must openly and publicly denounce all those who call his authority in question, and consider them as outcasts of society, whom to insult and treat with contumely is but giving them their just deserts. Such is the "glorious results" to which our free Constitution has brought us, or it is endeavored to bring us.

But, to return to the proceedings of congress on the amendments, it will be perceived Mr. Madison introduced, probably not without consultation, a series of resolutions for their consideration. It will be borne in mind Mr. Madison was a Virginian, and was a member of the convention of Virginia which adopted the Constitution and recom-

[1] Mr. George McDuffie's Message to the legislature of South Carolina.

mended the amendments that have been quoted in a former part of this work, as a part of the proceedings of that convention, and that, in the resolutions he now offers for the consideration of congress, he dares not, or, from his own sense of justice, he will not, introduce the word "freeman," in contradistinction to any other class of men, in any one of the amendments he introduces for their consideration; and, although we have not been able to get a report of all the speeches made on these amendments, yet, in those we have seen, there is not a word in favor of making any distinction among the various classes of men in the country, for whose "general welfare" the government was "established." In this instance it cannot be said that the word "freeman" was overlooked or forgotten. Two States, to say nothing of South Carolina and Georgia, had brought forward their claim to have it incorporated in the Constitution; but, when brought before the representatives of the *people*, it received no countenance. They were well aware of the damning disgrace it would bring upon their deliberations, and they cast it out as evil; or, whatever may have been their considerations, this word appears not on the *record;* and, by its not appearing there, when so directly suggested to the minds of the delegates in congress by the States above mentioned, together with the counter resolutions made by Massachusetts, and made, too, as was said in the convention of Massachusetts, for the very purpose of having an effect upon the individual in

slavery, and while the latter resolutions were in spirit adopted, and by adopting the principles of the others with this word "freeman" stricken out, thereby making the principles embodied in each of them to have a universal extension, — we cannot but come to the conclusion that the American people did not mean to have that system continued; but, on the contrary, they prepared the way for its entire extinction.

In order, therefore, to throw all the light in our power on this subject, we have concluded to copy the whole of the amendments that were introduced before congress, as reported in the Massachusetts Centinel of 1789—90, and also as they were passed by that body. We do it because we think them all-important to a candid decision of the several points under consideration; and, if we find this word "freeman," in contradistinction to other classes of persons, not made use of, or even not entertained, by the representatives of the people, we think our points are proved; for the introduction of it in the amendments proposed by Virginia and North Carolina shows what they thought would be the effect of the Constitution and of their amendments without this word. We therefore think it not only fair, but right, to suppose, if it is not used, the States that are in the Union fully acknowledged the principles contained in these amendments, and that they are of universal obligation; and we cannot but suppose our Supreme Court would thus decide; and, as a consequence, slavery would be no more; and the colored man will see the door

opened by which he can enter the temple of freedom; the only word we can here say to him is, let him be careful, when he has entered, how he deports himself in it.

Mr. Madison, after previous notice, introduced to the house of representatives (June 12, 1789) the following resolutions, for the consideration of the house, to be adopted as amendments to the Constitution:

"*Resolved*, That the following amendments ought to be proposed by congress to the legislatures of the States, to become, if ratified by three fourths thereof, part of the Constitution of the United States:

"First, that there be prefixed to the Constitution a declaration that all power is originally vested in, and consequently derived from, the *people;*

"That government is instituted, and ought to be exercised, for the benefit of the *people;* which consists in the enjoyment of life and *liberty*, with the right of *acquiring and using property*, and generally of pursuing and obtaining happiness and safety;

"That the people have an indubitable, inalienable, and indefeasible right to reform or change their government, whenever it is found adverse or inadequate to the purposes of its institution.

"Secondly, that, in article 1, section 2, clause three, these words shall be struck out, to wit: 'The number of representatives shall not exceed thirty thousand,' &c.; [this amendment relating simply to the number of representatives.]

"Thirdly, that, in article 1, section 6, clause one, there be added to the end of the first sentence these words, to wit: 'But no law, varying the compensation last ascer-

tained, shall operate before the next ensuing election of representatives.'

"Fourthly, that, in article 1, section 9, between the clauses three and four, be inserted these clauses, to wit:

"'The civil rights of none shall be abridged on account of religious belief or worship; nor shall any national religion be established; nor shall the full and equal rights of conscience, in any manner, nor on any pretext, be infringed.

"'The people shall not be deprived or abridged of the right to speak, to write, to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

"'The people shall not be restrained from peaceably assembling and consulting for their common good, nor from applying to the legislature, by petition or remonstrance, for redress of grievances.

"'The right of the people to keep and bear arms shall not be infringed; a well-armed and well-regulated militia being the best security for a free country. But no person, religiously scrupulous of bearing arms, shall be obliged to render military service in person.

"'No soldier shall, in time of peace, be quartered in any house, without the consent of the owners; nor at any time, but in the manner warranted by law.

"'No person shall be subject, except in case of impeachment, to more than one punishment, or one trial, for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, when it may be necessary for public use, without a just compensation.

"'Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

"'The right of the people to be secure in their per-

sons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

"'In all *criminal prosecutions*, the criminal shall enjoy the right of a speedy and public trial; to be informed of the cause and nature of the accusation; to be confronted by his accusers and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel in his defence.

"'The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution, but either as actual limitation of such powers, or as inserted merely for greater caution.'

"Fifthly, that, in article 1, section 10, between clauses one and two, be inserted this clause:

"'No State shall violate equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.'

"Sixthly, that in article 3, section 2, to be annexed to clause two these words, to wit:

"'But no appeal to such courts will be allowed when the value in controversy shall not amount to —— dollars; nor shall any fact triable by jury, according to the course of common law, be otherwise reëxamined than consists with the principles of common law.'

"Seventhly, that, in article 3, section 2, the clause to strike out, and insert the clauses following:

"'In the trial of all crimes (except in cases of impeachment, and cases arising in the land and naval forces, or in the militia when in actual service in time of war or

public danger) there shall be an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and, in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that, in cases of crimes committed within any county which may be in the possession of the enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county in the same State, as near as may be to the seat of the offence.'

"Eighthly, that immediately after article 6 be inserted, as article 7, the clauses following, to wit:

"'The powers delegated by this Constitution, and appropriated to the departments to which they are respectively distributed; so that the legislature shall never exercise the powers vested in the executive or judicial, nor the executive exercise the powers vested in the legislative or judicial, nor the judicial exercise the powers vested in the legislative or executive departments.

"'The powers not delegated by this Constitution, nor prohibited by the States, are reserved to the States respectively.'

"Ninthly, that article 7 be numbered as article 8."

After the amendments had been some time before the committee of the whole house, Mr. Ames moved they, together with the amendments proposed by the several States, be referred to a special committee; and Messrs. Gilman, Goodhue, Sherman, Benson, Boudinot, Clymer, Vining, Gall, Madison, Bush, Baldwin, were appointed on the 21st of July, 1789. On the 28th of the same month, Mr. Vining, from the committee, reported the following, to wit:

"In the introductory paragraph, before the words 'we the people' insert 'government being intended for the benefit of the people, and the rightful establishment thereof being derived from their authority alone.'

"Article 1, section 6, between the words 'United States' and 'shall in all cases,' strike out 'they,' and insert 'but no law varying the compensation shall take effect until an election of representatives shall have intervened. The members —'

"Article 1, section 9, between paragraph two and three, insert 'No religion shall be established by law, nor shall the equal rights of conscience be infringed.

"'The freedom of speech and of the press, and the right of the people peaceably to assemble, and consult for the common good, and to apply to the government for redress of grievances, shall not be infringed.

"'A well-regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms shall not be infringed; but no person religiously scrupulous shall be compelled to bear arms.

"'No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in manner prescribed by law.

"'No person shall be subject, except in case of impeachment, to more than one trial nor one punishment for the same offence, nor shall be compelled to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

"'Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.'

"Article 1, section 2, paragraph three, strike out all between the words 'direct' and 'and until such,' and,

instead thereof, insert 'After the first enumeration, there shall be one for every thirty thousand, until the number shall amount to one hundred; after which the proportion shall be so regulated by congress, that the number of representatives shall never be less than one hundred, nor more than one hundred and seventy-five, but each State shall have at least one representative.

"'The right of the people to be secure in their persons, papers, and effects, shall not be violated by warrants issuing without probable cause, supported by oath or affirmation; and not then without particularly describing the place to be searched, and the person or thing to be seized.

"'The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.'

"Article 1, section 10, between the first and second paragraphs, insert, 'No *State* shall infringe the equal rights of conscience, nor the freedom of speech or of the press, nor of the right of trial by jury in criminal cases.'

"Article 3, section 2, add to the second part, 'But no appeal to such court shall be allowed, where the value in controversy shall not amount to over a thousand dollars; nor shall any fact triable by a jury according to the course of common law be otherwise reëxamined than according to rules of common law.'

"Article 3, section 2, strike out the whole of the third paragraph, and insert, 'In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory processes for obtaining witnesses in his favor, and to have assistance of council in his defence.

"'The trial of all crimes (except in cases of impeach-

ment, and in cases arising in the land and naval forces, or in the militia, when in actual service in time of war or public danger) shall be an impartial jury of freeholders of the vicinage, with the requisite unanimity for conviction, the right of challenge, and other accustomed requisites; and no person shall be held for a capital, or other infamous crime, unless on a presentment or indictment by a grand jury; but, if a crime be committed in a place in possession of an enemy, or in which an insurrection may prevail, the trial and indictment may by law be authorized in some other place not within the State; and, if it be committed within a place not within a State, the indictment and trial may be in such place or places as the law may have directed.

"'In suits at common law, the right of trial by jury shall be preserved.'

"Immediately after article 6, the following be inserted as article 7:

"'The powers delegated by this Constitution to the government of the United States shall be exercised as therein appropriated, so that the legislature shall not exercise the power vested in the executive and the judicial, nor the executive the powers vested in the legislative or the judicial, nor the judicial the powers vested in the legislative or executive.

"'The powers not delegated by this Constitution, nor prohibited by the States, are reserved to the States respectively.'

"Article 7 to be made article 8."

On the 14th of August, 1789, "The amendments, as reported by the committee, were taken up to be acted upon." The first amendment being read, —

"Mr. Gerry objected to its phraseology, as it might

imply that all governments were established on this principle, and therefore, in point of fact, it was not true: the most of the governments of ancient and modern times were calculated on different principles. *They* had chiefly originated in fraud and force, and were *designed* for the purpose of *oppression* and personal ambition. He wished to have nothing go out from this body as a maxim which was false in fact, or which was not clear in its construction. He moved to alter the clause by inserting the words 'of right.'

"This motion was negatived.

"Mr. Tucker objected to any amendments being made to the preamble to the Constitution, and the object was only to amend the Constitution. The preamble was no more the subject of amendment than the letter of the president annexed to the Constitution.

"Mr. Smith, (S. C.) in answer to Mr. Tucker, showed that this amendment had been recommended by three States, and that it was proper it should be made.

"Mr. Tucker replied, he was not opposed to the principle, but thought this was an improper place to express it: it could be inserted with propriety in a bill of rights, if one should be agreed on.

"Others objected to the whole clause, as it was unnecessary, since the words 'we the people' contained within itself the *principle* of the *amendment fully*.

"Mr. Sherman observed, that, if the Constitution had been a grant from another power, it would be proper to express this principle; but, as the right expressed in the amendment was *natural* and *inherent* in the people, it is unnecessary to give any ground on which they made their Constitution. It was the act of their own sovereign will. It was also said it would injure the preamble."

Here the representatives acknowledge the in

alienable rights of mankind, and the very form of the expression made use of, it appears, was designed to make that acknowledgment, and to prevent congress from ever becoming, like foreign governments, an engine for power and oppression; that is, this government should not interfere with any man's inalienable rights, and that they should in no case prevent the freedom of speech, of the press, of conscience, of the right of petition, or of peaceably assembling together for discussion, &c. and that any laws which they should at any time see fit to pass taking away these rights, such laws (if they could be called such) would be null and void, and of no binding force on any one. It being presumed the "general welfare," and the liberty of the country, or of the individual, could not be gained in any instance by violating these rights, or that these benefits should not be attempted to be gained by violating individual liberty, or that they should not be guilty of an evil act, that a good might be derived, consequently all acts of our southern legislatures, preventing the colored people peaceably assembling to discuss their grievances, must be null and void. But to return:

"Mr. Madison contended for the amendment. He saw no difficulty in the amendment with the preamble without injuring the propriety or sense of the paragraph. Though it was indisputable that the principle was on all hands acknowledged, and could of itself derive no force from expressing it, yet he thought it prudent to insert it, as it had been recommended by three respectable States.

"The amendment was adopted."

Second amendment referred to the number of representatives. Mr. Ames wanted one for every 40,000.

"Article 1, section 9, between paragraphs two and three, 'No religion shall be established by law, nor shall the equal rights of conscience be infringed.'"

Mr. Livermore moved to strike out this clause, and to substitute one to the following effect: "The congress shall make no law touching religion or the rights of conscience." He observed, though the sense of both provisions was the same, yet the former might seem to wear an ill face, and was subject to misconstruction.

The question on this motion was carried.

It would appear Mr. Livermore would not admit congress held any power to establish any religious sect; that, from the very nature of the thing, they did not; and, as the form of the expression, as reported by the committee, might imply they had that power, he moved it be altered; and, under that impression, it was accordingly altered. It will be observed the understanding among the members of this congress was, that man possessed certain inalienable rights, and the great care manifested that it should not be in the power of congress, in making laws for the government of the country, to take away these rights; and, lest it might be thought at times they could so do, these amendments were proposed to prevent them. The assumption was, man in this country was and should be free; and, if in his freedom he violated the rights of no one else, he should be protected in his freedom. Let it be borne in mind the peo-

ple of the country are talking, not the people of the States; and, if the country protects the rights of the individual, certainly the States cannot take them away, much less can individuals: the lesser power cannot be greater than the whole.

"Fifth amendment: 'The freedom of speech and of the press, and of the right of the people peaceably to assemble and consult for their common good, and to apply to the government for redress of grievances, shall not be infringed.'"

Mr. Tucker moved to insert between the words "common good" "and to," in this paragraph, the words, "to instruct their representatives."

"On this motion a long debate ensued. Messrs. Hartly, Clymer, Sherman, Gerry, Madison, Smith, (S. C.) Stone, and others, spoke on the subject. All spoke against it, saving Mr. Gerry: the motion was negatived by a large majority. Mr. Sherman said he was there to consult the common good of the whole, and was the servant of the people at large.

"Mr. Stone said instead of being a representative government it would be a singular kind of democracy.

"Mr. Madison said it had been observed that the people are sovereign. True; but who are the people? Is every small district the *people*? And do the inhabitants of this district express the voice of the people when they may not be the thousandth part, and although their instructions may contradict the sense of the whole people besides?

"The 6th and 7th amendments were agreed to.

"In the 8th, on motion of Mr. Lawrence, after the words 'nor shall' these words were inserted: '*in any criminal cases.*'

"The 9th was adopted without any alterations.

"In the 10th, on motion of Mr. Benson, after the words 'and effects' these words were inserted: '*against unreasonable searches and seizures.*'

"The 11th, 12th, 13th, and 14th were agreed to in their original form. The committee then rose.

"Mr. Gerry introduced a motion on the subject of the amendments, to this purport: That such amendments to the Constitution of the United States as have been proposed by the different States, which are not in the report of the select committee, be referred to the committee of the whole house, and that those, with the amendments proposed by that committee, be included in the one report.

"This motion was seconded by Mr. Sumpter. After a long debate it was decided in the negative."

"August 19th, Mr. Sherman brought forward a motion for adding the amendments, by way of supplement, to the Constitution, which was agreed to by more than three fourths of the members present.

"The 1st amendment being taken up, on the question to agree to the same it was negatived.

"The 2d amendment was laid on the table for further consideration.

"The 3d amendment was agreed to.

"The 4th amendment, on motion of Mr. Ames, was altered so as to read, 'Congress shall make no law establishing religion, or to prevent the free exercise thereof, or to infringe the right of conscience.'

"The 5th amendment was agreed to.

"Mr. Scott objected to the clause in the 6th amendment,—'No person religiously scrupulous shall be compelled to bear arms.' He said if this becomes part of the Constitution, we can neither call upon such persons for services nor an equivalent: it is attended with fur-

ther difficulties, for you can never depend upon your militia.

"Mr. Boudinot said that the provision, or something like it, appeared to be necessary. What dependence can be placed in men who are conscientious in this respect? or what justice can there be in compelling men to bear arms, when, if they are honest men, they would rather die than use them? . . . . I wish, in establishing this government, we may be careful to let every person know that we will not interfere with their particular professions. If we strike out this clause, we shall lead such persons to conclude that we mean to compel them to bear arms. The words 'in person' were added after the word arms, and the amendment was adopted.

"The 7th, 8th, 9th, 10th, 11th, 12th, 13th, and 14th amendments, without any material alterations, were agreed to, as in the committee of the whole.

"The 16th, 17th, 18th, and 19th were agreed to without any essential alterations.

"The 2d amendment was then modified as it now stands.

"Messrs. Benson, Sherman, and Sedgwick were appointed a committee to arrange the amendments, and report to the house, when they were to be submitted to the State legislatures."

A correspondent of the Centinel remarks, —

"The business of the amendments has been managed with great candor and address by those who were friends of the Constitution, and such as were indifferent to any amendments. To those the sticklers for alterations are principally indebted; for it evidently appears that nothing short of such modification of the Constitution as would have extracted its essence and energy, would have satisfied the rigid anti-federalist: it appeared to

every dispassionate person, that the object of *some* was so to hack and mutilate the original system as to leave no conspicuous feature remaining; hence we should have lost a Constitution framed by our wisest and best characters, and which a majority of the people have adopted, and had a plan palmed upon us by men who were not, and never would have been, chosen by the people for the purpose of making a constitution. But the principal part of the *advocates for the amendments appear pretty well contented with the report.*

"The plan of incorporating the amendments being given up, the identity of the system remains; and if the amendments, in any future time, should be found to be unnecessary, superfluous, or absurd, they may be lopped off as a useless branch of the tree."

At the present day we do not find them useless, unnecessary, or superfluous.

A correspondent of August 26th, says, —

"Nothing can be more ridiculous and inconsistent, than a motion to have laid before congress ALL the amendments suggested by the several State legislatures, when it is considered that many of them are entirely contradictory to others, (especially those about the slave-trade,) some in favor of tender laws, &c. some local, some incomprehensible. Besides, it is hard to conceive how they can be admitted, especially in the senate, when it is recollected that a majority of the ratifying States did not wish a single amendment. Some were recommended as conciliatory, and in the hope,—as beautifully expressed by the president of the United States, to a late answer to an address, when speaking of the Constitution as it now stands, — that its mild, and yet efficient operation, would tend to remove every remaining apprehension of those with whose opinions it may not

entirely coincide, as well as to confirm the hopes of its numerous friends."

The amendments proposed by this congress, as it will be perceived, were adopted by the States, and now constitute a portion of the Constitution. We will therefore ask, if Virginia, North and South Carolina, and Georgia adopted them, after all that had been said upon the subject of slavery, and after the attempt to incorporate it on the Constitution by the amendments proposed by them had so signally failed, can it be that slavery is guaranteed, or even acknowledged? Or is it not rather here made evident it is destroyed, if the Constitution should be carried into effect, and that it is not even in the power of congress to establish it? and, if it is not in the power of congress to do it, can it be possible that a State, or the individuals of a State, can do it, without violating those inalienable rights, and that liberty for which the preamble to the Constitution was adopted to secure, as it expressly says to maintain these was the object for which the whole instrument was formed, and which its several articles go to confirm? Can a neighbor of mine have a greater command over my liberty than the acknowledged government of the country? The idea, it seems to us, is preposterous; and we cannot perceive, in any of the foregoing proceedings, the government of the country have deputized such power to any one, or have given the liberty of any class of its citizens in charge to any other, or that they even have the power of doing it; but, on the contrary, they are bound to preserve to each individual his liberty so far as in their power.

January 8th, 1796, Gen. Washington, in his inaugural address delivered before congress, among other things, observes, —

"Nor am I less persuaded you will agree with me in opinion, that there is nothing that can better deserve your patronage than the promotion of science and literature. *Knowledge, in every country, is the surest basis of public happiness.*" "Whether this desirable object will be best promoted by affording aid to seminaries of learning already established, by the institution of a national university, or by any other expedients, will be well worthy a place in the deliberations of the legislature."

If the legislature could build seminaries for the general benefit, could they not break up slavery for the general benefit? is there any difference in principle? we see none. In fact, if "knowledge is the surest basis of public happiness," and as it is universally acknowledged that the slave must be kept in a state of ignorance in order to keep him as a slave, we cannot but perceive that, if the government of the United States is to preserve the "public happiness," its first duty would be to see that the slave is instructed, if the States will not do it.

Hon. James Dana, judge of the District Court of the district of New York, in his first charge to the first grand inquest convened for that district, Feb. 5th, 1790, while speaking of the operation of the new Constitution, observed, — "Happy that we may confidently trust it will answer the inestimable purpose expressed in its preamble, — 'That it will form a more perfect

union,'" &c. quoting the whole preamble to the jury, as if he thought that was the principle on which the government was to be administered.

In an address, delivered to Gen. Washington by the judges of the Supreme Court of the State of Pennsylvania, April 20, 1789, they make use of this expression:

"And we hope and pray the same Providence will carry us through the great work (which seems reserved for you) of establishing justice, insuring domestic tranquillity, promoting the general welfare, and securing liberty and independence to the good people of your native country to their latest posterity."

In Washington's answer, he observes, —

"He should feel himself singularly happy in contributing to the glorious work."

Samuel Adams, in his address to the legislature of Massachusetts, on his induction into the office of lieutenant-governor of the State of Massachusetts, made use of this expression:

"If it be not improper on this occasion, may I beg leave to express a devout and fervent wish that gracious Heaven may quiet the public councils of the great confederate republic which compose it; so that the people may be highly respected and prosperous in their affairs abroad, and enjoy at home that tranquillity of mind which results from a well-grounded confidence that their *personal and domestic rights are secure.*"

The foregoing extracts, we think, prove very clearly our fourth proposition, namely, that the people, by the adoption of these amendments in the

form they did, caused the liberty of every individual to be secure; or, in the words of the proposition, "the determination of the people no constitution should be formed that put the liberty of the individual in danger." This is the most important; the other two propositions of importance are, in fact, involved in this one; for, if this is true, the others must be. But we will proceed yet further.

CHAPTER XIV.

THE PROCEEDINGS OF CONGRESS ON THE PRESENTATION OF THE PETITION BY THE SOCIETY OF QUAKERS FOR THE ABOLITION OF SLAVERY.

THE following observations were made in congress on the proposition to commit the memorial transmitted to the house of representatives, 1790, by the society of Quakers, on the subject of slavery. It is astonishing to find how analogous are the assertions made in those days to those made use of at the present time. While assertions are now made with prodigality, and attempts used to ward off discussion, one cannot but be reminded of the old adage, "The least said the soonest mended," practised by our most intelligent Southerners on this question of slavery; ay, even by those at the North who do not have any great desire to disturb this system. In this discussion, observe the address of Mr. Madison in wishing it given to a committee, not to be reported on, but that it might sleep; and how often has the subject, since that day, taken the same course, and the "tomb of the Capulets" been a safe resting-place for all such memorials till within a short time, when it would seem they had risen from their grave, and, by their resurrection, are enlightening the world!

We trust the stone has been rolled away from the door of the sepulchre, never more to close it; and man, disenthralled from the worse than death that has bound him to the car of a lordly master, will be able to walk forth in newness of life, rendering service to him only to whom service may be due.

As these proceedings were the first that took place after the adoption of the Constitution, we have concluded to copy them, that it may be seen what were the ideas advanced at that day, and also as they show distinctly that it was avowed and acknowledged by Mr. Madison that *congress did have power over the subject of slavery.* Whether, as a member of the original convention, he was willing to give congress power over the subject; or whether he was convinced, by the arguments urged by Mr. Henry in the convention of Virginia, that the power, by implication, was certainly given; or whether he found, in the necessary action of congress, it must be so; or, after the adoption of the amendments he could not but perceive such was the fact, — we will not determine. In the language he uses on the subject, in the quotations that follow, it will be perceived he is very decided; and that, in his opinion, congress has undoubted power over the subject, though the delegates from South Carolina and Georgia attempted to advance the idea that congress had not. Not only Mr. Madison, but Mr. Gerry and others, maintained the contrary, and went so far as to tell the Southern members their speeches had no arguments in them. It seemed a self-evident proposi-

tion with Mr. Gerry, that congress had power over the subject. Mr. Boudinot thought congress had done wrong in not exacting the ten dollars' duty on the importation of slaves, as it would encourage persons to put their capital in this unrestricted trade, in preference to those articles on which duty was paid. As no answer is reported to have been made to Mr. Madison's, Mr. Gerry's, or Mr. Boudinot's arguments, it is fair to conclude they were not answered; and the memorial was not acted upon, not because it was not constitutional to have carried out the ideas contained in it, but on account of the "begging" and "entreating" of the southern members, and their representing the dangers to which they imagined they might be exposed, the people of the North gave way.

Mr. Gerry went into a calculation of what the slaves might then be worth; and the value he put upon them was ten millions of dollars; and he thought, though he said he would make no proposition of the kind, that congress might take the western lands for the purpose of paying for their liberty. While such a course might, at the present day, be adopted, and perhaps many in our land would gladly do it, provided the disgrace which slavery is bringing upon it could be blotted out, and the slave could be at once relieved from his chains; and because the North itself has more or less participated in the traffic, and has been the seller of the *stolen property*, and has received the wages of its iniquity, and therefore, in justice, if it now cause the purchaser to give it up, it

should help bear the loss, if any there should be; — while, we say, there is this class of persons, there are others who deny that any remuneration should be given any one for acting honestly, and doing that which is just and equal; and who say the slaveholder has already received more than his just remuneration; and, as the slave has so long worked for him, it is no more than right the master should pay the debt by working for the slave in turn. There are others, again, who say there is no real property in slaves at all; that the planter would be richer without than with them; that only as they are bought and sold, and capable of being transferred, or are let out for hire, are they of any pecuniary value; that the man is more willing to work without shackles than with them; that he is more ready to exert his inventive genius, and is really of more value, as a freeman than as a slave. Not, however, on the principle lately promulgated, — because more can be wrung out of the freeman by any peculiar oppression exercised towards the employed by the employer, — but because the man feels he is a freeman, and that what he does is, at least in a measure, his own choice; or that, by exerting his best powers, it may enable him to raise himself from penury and from want; whereas the slave has no such stimulus, and consequently neglects to do what he might with convenience. Having the doors for promotion now shut against him, he has no object before him, and therefore will not work more than he can help; consequently, all that would be given

the master would be a gratuity; and, from this cause alone, the master should receive no compensation. And, further, slaveholding is a sin, both against God and man, and should at once be repented of and relinquished; and a man should no more be guilty of it than he would be guilty of theft, robbery, or murder.

But, if we are correct in the position we have assumed in this work, it matters not what may be the views now held on the subject of remuneration, as our fathers have settled it in the Constitution, by giving to every man an opportunity to obtain his freedom by civil process, and without compensation, his freedom being his inalienable right.

But to return to our quotations:

"Mr. Tucker said he considered the memorial to be so glaring an interference with the Constitution, that he had hoped the house would not have given so much countenance to a request so improper in itself. He was sorry the society had discovered so little prudence in their memorial as to wish that congress would intermeddle in the *internal regulations of the particular States.* He hoped the petition would not be committed, as it would operate directly against the interest of those it was designed to benefit. This is a business that would be attended with the most serious consequences: it may end in the subversion of the government, being a direct attack on the rights and property of the Southern States. He then inquired what satisfaction was to be made to the proprietors of slaves. He believed it was not in the power of the States to make indemnification for the loss that would attend emancipation. He reprobated the

interposition of the society, and denied they possessed any more humanity than other denominations."

"Mr. Gerry replied to Mr. Tucker, and desired the gentleman to point out any part of the memorial which proposed the legislature should infringe on the *Constitution*. For his part, he had heard nothing read that had such a tendency. Its only object was, that congress would exert their constitutional authority to abate the horrors of slavery, so far as they could. He hoped the petition would be committed."

"Mr. Burke reprobated the commitment as subversive of the Constitution, as sounding an alarm, and blowing the trumpet of sedition in the Southern States. He should oppose the business totally, and, if chosen on the committee, he should decline serving."

"Mr. Scott was in favor of its commitment."

"Mr. Jackson was opposed to it, and painted in strong colors the alarming consequences to be apprehended from taking up the business, — revolt, insurrection, and devastation, — and concluded by an observation similar to Mr. Burke's."

"Mr. Sherman could see no difficulty in committing the memorial: the committee may bring in such a report as may prove satisfactory on all sides."

"Mr. Baldwin referred to the principles of accommodation, which prevailed at the time of forming the government. Those mutual concessions that then took place gave us a constitution which was to secure the peace and the equal rights and properties of the several States; and, to prevent all infractions of rights in this particular instance, they precluded themselves, by an express stipulation, from all interposition in the *slave-trade*. Congress are not *called upon to declare their sentiments* upon this occasion; they cannot constitutionally interfere in the business. He deprecated the consequence of such a

measure in very forcible terms, and *hoped the house would proceed no further in the investigation of the subject.*"

"Mr. Smith, (S. C.) recurring to the memorial, observed that congress could not constitutionally interfere in the business, upon the prayer of the memorialist, as that went to the *entire abolition of slavery:* it could not, therefore, with propriety, be referred to a committee.

"In the Southern States, difficulties on this account had arisen in respect to the ratification of the Constitution; and, except their apprehensions on this head had been dissipated by their property being secured to them and *guaranteed* to them by the Constitution itself, they never could have adopted it. He then depicted the miseries that would result from the interference of congress in the southern governments. He asserted, as his opinion, that, if there were no slaves in the Southern States, they would be *entirely depopulated:* from the nature of the country, it could not be cultivated without them. Their proprietors are persons of as much humanity as the inhabitants of any part of the continent: they are as conspicuous for their morals as any of their neighbors.

"He then asserted that the Quakers are a society not known to our laws; that they stand in exactly the same situation with other religious societies: their memorial relates to a matter in which they are no more interested than any sect whatever; and it therefore must be considered in the light of advice: and is it customary to refer a piece of advice to a committee? He then contrasted this memorial with one that might be presented from the sect called Shaking Quakers, whose principles and practices are represented in a very exceptionable point of light, and asked whether congress would pay any attention to such a memorial. He hoped the memorial would not be committed."

If Mr. Smith really thought that the interference of congress on the subject of slavery was unconstitutional, when so good an opportunity was offered, why did he not dwell upon this point, — the strongest point he could have urged? and, if he could have shown it was not in their power to interfere, there would have been an end to the subject. But, instead of stopping on what he undoubtedly knew was an untenable point, he talks about the *humanity of the slaveholder, and about the practices of the Shaking Quakers.*

"Mr. Page was in favor of the commitment. He hoped that the benevolent designs of the respectable memorialists would not be frustrated at the threshold, so far as to preclude a fair discussion of the prayer of their memorial. He said, they do not apply for a total abolition of slavery. They only request that such measures may be taken, consistent with the Constitution, as may finally issue in the total abolition of the slave-trade. He could not conceive that the apprehensions entertained by the gentlemen from Georgia and South Carolina were well founded, as they respected the proposed interference of congress."

"Mr. Madison observed it was his opinion, yesterday, that the best way to proceed in the business was to commit the memorial, *without debate* on the subject. From what has taken place, he was more convinced of the propriety of the idea. But, as the business has engaged the attention of many members, and much has been said by gentlemen, he would offer a few observations for the consideration of the house. He then went into a critical review of the circumstances respecting the adoption of the Constitution, the ideas upon the limitation of the powers of congress to interfere in the regulation of *com-*

merce in slaves, and showing they were not precluded from interfering in their importation, and, *generally*, to *regulate* the mode in which *every species of business shall be transacted*. He adverted to the western country, and the cession of Georgia, *in which congress has* CERTAINLY *the power to* REGULATE *the subject of slavery;* which shows that gentlemen are MISTAKEN in supposing that congress cannot constitutionally interfere in the business, in any degree whatever. He was in favor of committing the petition, and justified the measure by repeated precedents in the proceedings of the house."

"Mr. Gerry entered into a justification of the interference of congress, as being fully compatible with the Constitution. He descanted on the miseries to which the Africans are subjected by this traffic, and said he never contemplated this subject without reflecting what his own feelings would be, in case himself, his children, or friends, were placed in the same deplorable circumstances. He then adverted to the flagrant acts of cruelty which are committed in carrying on that traffic, and asked whether it can be supposed that congress has no power to prevent such transactions as far as possible. He then referred to the Constitution, and pointed out the restrictions laid on the general government respecting the importation of slaves. It is not, he presumed, in the contemplation of any gentleman in this house to violate that part of the Constitution; but that we have a right to regulate this business is as clear as that we have any rights whatever; nor has the contrary been shown by any person who has spoken on the occasion. Congress can, agreeably to the Constitution, lay a duty of ten dollars a head on slaves; they may do this immediately. He made a calculation of the value of slaves in the Southern States: he supposed they might be worth ten millions of dollars. Congress have a right, if they see proper, to make a *proposal to the Southern States to*

purchase the whole of them; and their resources in the western country may furnish them with the means. He did not mean to suggest a measure of this kind; he only instanced these particulars to show that congress *has a right to interfere in this business.* He thought that no objection had been offered of any force to prevent the committing the memorial."

"Mr. Boudinot was in favor of the commitment, and enlarged on the idea suggested by Mr. Gerry, and observed the memorial contained only a request that congress would interpose their authority in the cause of humanity and mercy."

"Mr. Gerry and Mr. Stone severally spoke again on the subject. The latter gentleman, in opposition, said that this memorial was a thing of course; for there never was a society of any considerable extent, which did not interfere with the concerns of other people; and this interference, at one time or another, deluged the world in blood. On this *principle, he was opposed* to the commitment."

"Mr. Tucker moved to modify the first by striking out all after the word 'opinion,' and insert the following: 'that the several memorials proposed for the consideration of this house, a subject on which its interference would be unconstitutional, and even its deliberations highly injurious to some of the States of the Union.'"

"Mr. Jackson observed he had been silent on the subject of the report coming before the committee, because he wished the principles of the resolutions to be fairly examined, and to be decided on their true grounds. He was against the proposition generally, and would examine the policy, the justice, and the use of them; and he hoped, if he could make them appear in the same light to others as they did to him, by fair arguments, that the gentlemen in opposition were not so determined in their opinions as not to give up their present sentiments.

"With respect to the policy of the measure, the situation of the slaves here, their situation in their native States, and the disposition of them in case emancipation, should be considered. That slavery was an evil habit he did not mean to controvert; but that habit was already established, and there were peculiar situations in countries which rendered that habit necessary. Such situations the States of South Carolina and Georgia were in; large tracts of the most fertile land on the continent remained uncultivated for the want of population. It was frequently advanced on the floor of congress, how unhealthy those climates were, and how impossible it was for northern constitutions to exist there. What, he asked, is to be done with this uncultivated territory? Is it to remain a waste? Is the rice trade to be banished from our coast? Is congress willing to deprive itself of the revenue arising from that trade, which is daily increasing, and throw this great advantage into the hands of other countries?

"Let us examine the use or benefit contained in the report. I call upon gentlemen to give me one single instance in which they can be of any service. They are of no use to congress. The powers of that body are already defined, and those powers cannot be amended, confirmed, or diminished, by ten thousand resolutions. Is not the first proposition of the report contained in the Constitution? Is not that the guide and rule of legislation? A multiplicity of laws is reprobated in society, and tends to confound and perplex. How strange would a law appear to *confirm a law;* and how much more strange must it appear for this body to pass *resolutions to confirm the Constitution* under which they sit! This is the case with others of the resolutions.

"A gentleman from Maryland (Mr. Stone) very properly observed that the Union had received the States with all their *evil* habits about them. This was one of

those habits, established long before the Constitution, and could not now be remedied. He *begged* congress to reflect on the number on the continent who were opposed to this Constitution, and on the number which yet remained in the Southern States.

"The violation of this compact they would seize on with avidity; they would make a handle of it to cover their designs against the government, and many good federalists, who would be injured by the measure, would be induced to join them; his heart was truly federal, and it had always been so; and he wished those designs frustrated. He *begged* congress *to beware* before they went *too far; he called on them to attend to* the interests of two whole States, as well as a memorial of a society of Quakers, who came forward to blow the trumpet of sedition, and to destroy that Constitution which they had not in the least contributed, by personal services or supply, to establish.

"He seconded Mr. Tucker's motion."

It would seem, from Mr. Jackson's observations, he thought the memorial was so much in harmony with the Constitution that congress would, by adopting its principles, be but making resolutions confirmatory of their acknowledged powers; and also the thought never struck him the African could have willingly emigrated to this country, if proper means had been used to induce him to come, as well as to have brought him here by force, and against his consent.

"Mr. Smith, of South Carolina, said the gentleman from Massachusetts (Mr. Gerry) had declared it was the opinion of the select committee of which he was a member that the memorial from the Pennsylvania society required congress to violate the Constitution. It was

not less astonishing to see Dr. Franklin taking the lead in a business which looks so much like persecution of the southern inhabitants, when he recollected the parable he had written some time ago, with a view of showing the impropriety of one set of men persecuting others for a difference of opinion. The parable was to this effect: An old traveller, hungry and weary, applied to the patriarch Abraham for a night's lodging. In conversation, Abraham discovered the stranger differed from him on religious points, and turned him out of doors. In the night God appeared unto Abraham, and said, Where is the stranger? Abraham answered, I found that he did not worship the true God, and so I turned him out of doors. The Almighty thus rebuked the patriarch: 'Have I borne with him threescore and ten years, and couldst not thou bear with him one night?' Has not the Almighty, said Mr. Smith, borne with us more than threescore and ten years? He has even made our country opulent, and shed the blessings of affluence and prosperity on our land, notwithstanding all its slaves, and must we now be ruined on account of the tender consciences of a few scrupulous individuals who differ from us on this point?

"Mr. Boudinot agreed with the general doctrines of Mr. S. but could not agree that the clause in the Constitution relating to the want of power in congress to prohibit the importation of such persons as any of the *States now existing* shall think proper to admit, prior to the year 1808, and authorizing a tax or duty on such importations, not exceeding ten dollars for each person, did not extend to negro slaves. Candor required that he should acknowledge that this was the express design of the Constitution; and therefore congress could not interfere in prohibiting the importation, or promoting the emancipation, of them, *prior* to that period.

"Mr. Boudinot observed, that he was well informed the tax or duty of ten dollars was provided instead of five per cent. *ad valorem*, and was so expressly understood by all the parties in the convention; that therefore it was the interest and duty of congress to impose this tax, or it would not be doing justice to the States, or equalizing the duties throughout the Union. If this was not done, merchants might bring their whole capital in this branch of trade, and save paying any duties whatever. Mr. Boudinot observed, that the gentleman had overlooked the prophecy of St. Peter, where he foretells, among *other damnable heresies*, 'Through covetousness shall they with feigned words make merchandise of you.'" [Memorial rejected.] [1]

Without adverting here to any arguments used in this work on the general welfare, the interest the whole country has in suppressing insurrections and keeping the people in a state of peace and quietness, or the power of congress over the effective strength of the country in case of war, if Mr. Madison's and Mr. Gerry's assertions are correct in the foregoing proceedings — and Mr. Madison was an actor in all of the various stages through which the Constitution passed, and who undoubtedly had as good an opportunity of knowing the feelings and sentiments of all who had taken an interest in having it adopted as any one, and whose opinions seem, in some measure, to have changed towards this point — our second proposition, we think, is proved; namely, that the general government has power to abolish the system of slavery, if it should require its assistance so to do.

[1] Elliot's Reports, vol. iv. p. 211.

CHAPTER XV.

ARGUMENTS DERIVED FROM THE DECISIONS OF THE COURT OF THE UNITED STATES.

We will now turn to some of the legal decisions made in the Supreme Court of the United States, and see if we can glean from them any views that would coincide with the opinion held forth in this work. In doing so, we are aware that, in many cases cited, the subject of slavery, or the relation the slave is said to hold to his master, may not have entered into the mind of the judge, or judges, who have decided in the several cases brought forward. Consequently, we shall assume the colored man has inalienable rights, as well as the white man; and if he is a man, he must be treated as such; and, therefore, whatever is true of one is true of the other, and the immunities granted to one is equally to be considered within the reach of the other. For, unless we admit the law of force — that might makes right — and that the decisions of our courts are founded on this principle, we must put ALL men under the protection of the law; and as no distinction is any where acknowledged as dependent on the color of the skin, and the colored man has not admitted he is subject to any laws that may have been made in

violation of his rights, we must suppose the courts will not object, that the doctrines advanced that secure the rights of one class of men are broad enough to secure the rights of all. For we ask the question — and we put it with all seriousness — if A, B, and C can get together and make laws for D, E, and F, when D, E, and F do not acknowledge the supremacy that is sought to be obtained, what right has A, B, and C to make laws for D, E, and F, when the latter can take care of themselves as well as the former; or, even if they cannot so well as might be desired, if they are satisfied with their condition, and do not interfere with the rights of others, from whence does A, B, and C, or any one else, derive their authority to cause D, E, and F, against their will, to bow to their supremacy? Clearly they, nor any others, have the right, unless, when they come into society to enjoy its benefits, they, with the rest, submit to equal and impartial laws. Supposing, then, that the government of the United States was established for the purpose — and as we have attempted in these pages to prove it was established — to give equal and impartial laws to all, whether white or black, bond or free, whether they live at the South, or reside at the North; that all and each come under the same laws, are to be treated alike; and that there is to be no distinction, where no distinction is pointed out. The descendants of Africa are nowhere designated to be treated differently from the descendants of Europe: one fate, one destiny, so far as language expresses

thought, await on each and all that come within the borders of our country. But, without further comment, we will quote from the case Marbery *vs.* Madison.

In this case, Mr. Marbery asked for a mandamus to be issued against James Madison, for not giving him his commission when he had received an appointment from John Adams. The court decided, that, after he had received the appointment, and it was signed by the president, and the seal of the state was attached, he had a right to the office, and the court fortified the position they assumed on these grounds: among others they say, —

"This brings us to the second inquiry, which is, — if he has a right, and that right has been violated, do the laws of his country afford him a remedy?

"The very essence of civil liberty certainly consists in the right of *every individual* to claim protection of the laws *whenever he receives an injury.* One of the *first duties* of government is to afford that protection. In Great Britian, the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.

"In the third volume of his commentaries, page 23, Blackstone states two cases by which a remedy is afforded by mere operation of law.

"'In all other cases,' he says, 'it is a general and indispensable rule, that, where there is a legal right, there is a legal remedy by suit, or action of law, whenever that right is invaded.'

"And afterwards, page 109 of the same volume, he says, — 'I am next to consider such injuries as are cognizable by the courts of the common law. And herein

I shall, for the present, only remark that all possible injuries whatsoever, that did not fall within the exclusive cognizance of either the ecclesiastical, military, or maritime tribunals are, for that very reason, within the cognizance of the common law courts of justice; for it is a settled and invariable principle in the laws of England, that every *right*, when withheld, must have a *remedy*, and every *injury* its proper *redress*.'

"The government of the United States has been *emphatically termed* a *government* of *laws*, and not of *men*. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for a vested legal right.

"If this obloquy is to be cast upon the jurisprudence of our country, it must arise from the peculiar character of the case."[1]

Further on, in the same case, he says, —

"That the people have an original right to establish, for their future government, such principles as in their opinion shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles, therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent."[2]

It is certainly hoped Mr. Marshall, in the expressions "vested legal rights," and "the peculiar character of the case," meant not any peculiar character in the American Constitution, and that these ex-

[1] Marshall on the Constitution, p. 24. [2] *Idem*, p. 161.

pressions were used to avoid making observations that would, in their consequences, carry him too far in the cause of individual liberty and rights; and, as these latter were specially confided to the keeping of the United States, when a State could not or would not maintain them, we must presume he meant in the expressions "vested legal rights," &c. all the rights of an individual, unless those rights had been forfeited by some peculiar criminal act on the part of the individual.

The case of Sturgis vs. Crowningshield. — This was a case on the obligation of contracts. An argument was adduced, when the States had, from their earliest legislation, discharged contracts, and, consequently, as this was a case that would be beneficial in the operation of a discharge, it would not come within the meaning of the Constitution. The court answer this objection by saying, —

"That, although the spirit of an instrument, especially of a constitution, is to be respected, not less than its letter, yet the spirit is to be collected chiefly from its *words*. It would be dangerous in the extreme to infer, from extrinsic circumstances, that a case, for which the words of an instrument expressly provide, should be exempted from its operation. When words conflict with each other, when the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But if in any case the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be

disregarded, because the framers of that instrument did not mean what they say, it must be one in which the absurdity and injustice of applying the provisions to the case would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application."[1]

In the Constitution of the United States, what is the spirit to be gathered from the words, and what construction should be put upon them? Are the amendments made to this instrument in conflict with other parts of it? do they contradict any other of its provisions, or are they not rather in harmony? or were they not meant to elucidate or to fortify the principles of liberty, which were thought not to be sufficiently clear or prominent in the instrument proposed? or did the framers of these amendments not intend what they said? Would the applying the provisions here made to *all* the people of the land be so "monstrous," or "absurd" and "unjust," "that *all mankind* would, without hesitation, unite in rejecting the application;" or is the not applying them, as was the known intention of those by whose influence they were introduced in the form they were, the crying sin of the land, producing the monstrosities, absurdities, and injustice that are now manifested, and that have exhibited themselves in almost all the legislative halls of our land? For ourselves, we cannot but suppose our practices, having been so opposed to the general principles of that instrument, have been the cause

[1] Marshall on the Constitution, p. 155.

of nearly all our internal dissensions, and that our departure from these general principles is the cause why we may be pointed at by the finger of scorn for our inconsistency. We know of no other reason why it could be done.

The case of McCulloch vs. the State of Maryland. — This case was one for testing the right of the State in taxing a branch of the United States Bank by the State of Maryland, and in which the constitutionality of establishing such an institution at all was called in question ; and for our purpose we quote,—

"The first question made in the cause is, has congress power to incorporate a bank?

"It has been truly said this can scarcely be considered an open question, entirely unprejudiced by former proceedings of the nation respecting it The principle now contested was introduced at a very early period of our history, has been recognized by many successive legislatures, and *has been* acted upon, by the judicial department, in cases of peculiar delicacy, as a law of undoubted obligation."

"The power now contested was exercised by the first congress elected under the present Constitution. The bill for incorporation of the Bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principles were completely understood, and was opposed with equal zeal and ability. After being resisted first in the fair and open field of debate, and, afterwards in the executive cabinet, with as much persevering talent as any measure has ever experienced, and being supported by arguments which convinced minds as pure and as intelligent as this country can boast, it became a law. The original act was permitted to expire ;

but a short experience of the embarrassments to which a refusal to revive it exposed the government convinced those who were most prejudiced against the measure of its necessity, and induced the passage of the present law. It would require no ordinary share of intrepidity to assert that a measure adopted under these circumstances was a bold and a plain usurpation, to which the Constitution gave no countenance."

"In discussing this question, the council for the State of Maryland have deemed it of some importance, in the construction of the Constitution, to consider that instrument not as emanating from the *people*, but as the act of sovereign States. The powers of the general government, it has been said, are delegated by the States, who alone are truly sovereign, and must be exercised in subordination to the States, who alone possess supreme dominion.

"It would be difficult to sustain this proposition. The convention which framed the Constitution was indeed elected by the State legislatures; but the instrument, when it came from their hands, was a mere proposal, without obligation, or pretension to it. It was then reported to the then existing congress of the United States, with a request that it might 'be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification.'

"This mode of proceeding was adopted; and by the convention, by congress, and by the State legislatures, the instrument was submitted to the people. They acted upon it in the manner they can act safely, effectively, and wisely, on such a subject, by assembling in convention. It is true, they assembled in their several States; and where else should they have assembled? No political dreamer was ever wild enough to think of

breaking down the lines that separate the States, and of compounding the American people in one common mass. Of consequence, when they act, they act in their States. But the measures they adopt do not, on that account, cease to be measures of the people themselves, or become the measures of the State governments.

"From these *conventions* the Constitution derives its whole authority. The government proceeds directly from the people; is 'ordained and established' in the name of the people, and is declared to be ordained *in order to form a more perfect union, establish justice, insure domestic tranquillity, and secure the blessings of liberty to themselves and their posterity.*"

"The assent of the States in their sovereign capacity is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negatived by the State governments. The Constitution, when thus adopted, was of complete obligation, and *bound the State sovereignties.*"

"To the formation of a league, such as was the confederation, the State sovereignties were certainly competent. But when, 'in order to form a more perfect union,' it was deemed necessary to change the alliance into an effective government, possessing great and sovereign powers, and acting directly on the *people*, the necessity of referring it to the *people*, and of deriving its powers directly from them, was felt and acknowledged by all.

"The government of the Union, then, (whatever may be the influence of this fact on the case,) is emphatically and truly a government of the people. In form and in substance it emanated from them. Its powers are grant-

ed by them, and are to be exercised directly on them, and for their benefit." [1]

"If any proposition could command the universal assent of mankind, we might expect it would be this, — that the government of the Union, though limited in its powers, is supreme within its sphere of action."

"But this question is not left to mere reasoning. The people have, in expressed terms, decided it by saying, '*This Constitution, and the laws of the United States which shall be made in pursuance thereof*,' '*shall be the supreme law of the land*,' and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it." [2]

"It can never be pretended that these vast powers draw after them others of inferior importance, merely because they are inferior. Such an idea can never be advanced. But it may, with great reason, be contended, that a government entrusted with such ample powers, on the due execution of which the happiness and prosperity of the nation so vitally depend, must also be entrusted with ample means for their execution. The power being given, it is for the interest of the nation to facilitate its execution." [3]

"But the Constitution of the United States has not left the right of congress to employ the necessary means for the execution of the powers conferred on the government to general reasoning. To its enumerated powers is added that of making 'all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department thereof.'" [4]

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[1] Marshall on the Constitution, p. 161.
[2] *Idem*, p. 164.
[3] *Idem*, p. 166.
[4] *Idem*, p. 168.

Mr. Marshall, in making this assertion, gives the following reasons for so doing:

"1. The clause is placed among the powers of congress, not among the limitation of those powers.

"2. Its terms purport to enlarge, not to diminish, the powers vested in the government. It purports to be an additional power, not a restriction on those already granted. No reason has been, or can be, assigned for thus concealing an intention to narrow the discretion of the national legislature under words which purport to enlarge it. The framers of the Constitution wished its adoption, and well knew it would be endangered by its strength, not by its weakness. Had they been *capable of using language* which would convey to the eye one idea, and, after deep reflection, *impress on the mind another*, they would rather have disguised the grant of power than its limitation. If, then, their intention had been, by this clause to restrain the free use of means which might otherwise have been implied, that intention would have been inserted in another place, and would have been expressed in terms resembling these: 'In carrying into execution the foregoing powers,' &c. 'no law shall be passed but such as shall be necessary and proper.' Had the intention been to make this clause restrictive, it would unquestionably have been so in form, as well as in effect.

"The result of the most careful and attentive consideration bestowed on this clause is, that if it does not enlarge, it cannot be construed to restrain the powers of congress, or to impair the right of the legislature to exercise its best judgment in the selection of measures to carry into execution the constitutional powers of the government. If no other motive can be suggested, a sufficient one is found in the desire to remove all *doubts*

respecting the *right* to *legislate* in that vast *mass* of *incidental powers* which must be involved in the Constitution, if that instrument be not a splendid bauble.

"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the legislature the discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in a manner most beneficial to the people. *Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consists with the letter and spirit of the Constitution, are constitutional.*"[1]

"Should congress, in the execution of its powers, adopt measures which are *prohibited* by the Constitution, or should congress, under the pretence of executing its powers, pass laws for the accomplishment of its objects not entrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But when the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such power."[2]

"After the most deliberate consideration, it is the unanimous opinion of this court, that the act to incorporate the Bank of the United States is a law made in

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[1] Marshall on the Constitution, p. 174. [2] *Idem*, p. 177.

pursuance of the Constitution, and is a part of the supreme law of the land." [1]

Now if it was in the power of congress, as this court has decided, to establish a bank for the general good of the community, or to facilitate the operations of the government, might they not break up a system of slavery, when it is found for the general good to have it done, or when it is found this system is constantly involving the government in expenses, and the country in acts of oppression? Can one be any greater stretch of power than the other? If we can build up for the general good, can we not pull down? If the people of the land can create, can they not also destroy? Or must they, whether they will or no, suffer an evil, and that a constantly growing evil, to increase without let or hinderance? We see not the object of any government, if such be the fact.

But it would seem, from this decision, our fathers did not leave the subject so loose. "They left the question not to mere reason: the people have in express terms decided it, by saying, this Constitution, and laws made in pursuance thereof, shall be the supreme law of the land." And we would ask if the not making every person free in our land would not be in pursuance of, and consistent with, the provisions of the Constitution. We think it would be hard for any one, consistently with truth, to contradict or deny it; and, while the court say the people have the power of

[1] Marshall on the Constitution, p. 178.

making the laws, they also claim the power of executing them, as will be observed in the quotations from pages 166 and 174; consequently, if they have the power of abolishing slavery, if the Constitution has not already done it, they would have it in their power to put their laws into execution. If, then, these are facts, and this arguing is correct, and slavery is found to be inconsistent with the Constitution, both in its spirit and its letter, that it is destructive to the best interest of the country, congress, while it possesses the power of declaring it is so, possesses also the power of carrying any law into effect which would be necessary for its overthrow. For, if it possesses the power of establishing a bank because it is convenient to carry on the operations of government, may it not also possess the power of establishing the rights of the members of that government? or are personal rights of less consequence than money; and may they be invaded and set at naught, and no objection made, when we may spend all our time in legislating how money may be spent or transmitted by the community? No! The first consideration was, and is, to establish and preserve the individual in his freedom, and then to legislate how to act in that freedom with the greatest benefit to himself and those around him. Having decided these points, then the power of the legislature comes in, with power to carry into execution its determinations, if not restrained by some express considerations. This seems to us the doctrine held by the court.

Again, in the same case, he says, —

"The argument on the part of the State of Maryland is, not that the States may directly resist a law of congress, but that they may exercise their acknowledged power upon it, and that the Constitution leaves them this right, in the confidence they will not abuse it.

"Before we proceed to examine this argument, and subject it to the test of the Constitution, we must be permitted to bestow a few considerations on the nature and extent of this original right of taxation, which is acknowledged to remain with the States. It is admitted that the power of taxing the people and their property is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.

"The people of a State therefore give to their government a right of taxing themselves and their property; and, as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislature, and on the influence of the constituents over their representatives, to guard them against its abuse. But the means employed by the government have no such security; nor is the right to tax them sustained by the same theory. Those means are not given by the people of a particular State, nor given by the constituents of the legislature which claims the right to tax them, but the people of all the States. They are given by all for the benefit of all, and upon theory should be subjected to that government only which belongs to all."[1]

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[1] Marshall on the Constitution, p. 180.

"The sovereignty of a State extends to every thing which *exists by its own authority*, or is *introduced by its permission;* but does it extend to those means employed by congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable it does not. These powers are not given by the people of a single State; they are given by the people of the United States to a government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single State cannot confer a sovereignty which will extend over them.

"If we measure the power of taxation residing in a State by the extent of sovereignty which the people of a single State possess and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a State unimpaired, which leaves to a State the command of all its resources, and which places beyond its reach all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the States and safe for the Union, &c."

"But, waiving this theory for the present, let us resume the inquiry, whether this power can be exercised by the respective States, consistently with a fair construction of the Constitution.

"That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on our government the power to control the constitutional measures of another, which other, with

respect to those very measures, is declared to be supreme over that which exerts the control,— are propositions not to be denied. But all inconsistencies are to be reconciled by the magic word CONFIDENCE. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to assume which would banish that confidence which is essential to all government.

"But is this a case of confidence? Would the people of one State trust those of another with the power to control the most insignificant operations of their State governments? We know they would not. Why, then, should we suppose that the pepole of any one State should be willing to trust those of another with the power to control the operations of a government to which they have *confided their most important and most valuable interest?* In the legislature of the Union *alone* are *all represented.* The legislature of the Union alone therefore, can be trusted by the people with the power of controlling measures which concern all, in the confidence it will not be abused. This, then, is not a case of confidence, and we must consider it as it really is."[1]

After some more arguments elucidating this point, he comes to this conclusion:

"We are unanimously of the opinion that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States, is unconstitutional and void.

"This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland

[1] Marshall on the Constitution, p. 181.

may hold in this institution, in common with other property of the same description throughout the State. But this is a tax on the operation of the bank, and is consequently a tax on the operation of an instrument employed by the government of the Union to carry its powers into execution. Such a tax must be unconstitutional."[1]

Here is a case where the power of the people comes in play, independent of the State authority, and the court justifies the power; and, in the course of their observations, they say the "sovereignty of a State extends to every thing which exists by its own authority, or is introduced by its permission." If man was a thing, we might ask, does he exist by the authority of a State, or is he introduced into a State by its permission? We answer, no. Also it is not in the power of the States to prevent any person from coming within their borders: this power now lays alone in congress, and it is by permission of congress alone any one can take up their residence in this country; (though we trust this power of prevention will not be exercised;) and, consequently, the sovereignty over him for certain purposes remains alone in congress, according to the reasoning here adopted by the court.

The court comments justly, we think, on the word confidence. Since the late developements of the feeling of the South on the subject of slavery, what confidence, we may now ask, can be put in communities who have shown such a disposition to depart from all the established principles of our

[1] Marshall on the Constitution, p. 187.

government, and declarations of our fathers, as is now manifested in the desire to continue slavery in our land. It is well, we trust, there is a power some where to put a check to this departure from our principles, and we trust, ere long, we shall be able to exercise it. Instead of preparing the slave for freedom, as it was understood they would do, they have constantly been drawing the chains closer, and, by legislative acts, endeavoring to render his case perfectly hopeless, thereby preventing the country from receiving that service from him which it might otherwise have done. The taking our capitol at Washington by the British soldiers might, it is said, have been prevented, had the colored population had their freedom ; for, instead of being a body of men on whom they could rely, they were, on the contrary, to be dreaded ; in fact, if our impression is right, many chose the British camp rather than the homes their masters had provided for them ; consequently we see not but the holding men in slavery is as much a tax on the operations of the government, as a tax would be on the operation of a bank, established by them. Is not the Florida war, also, a tax on the operation of our government, as also the removing the Cherokees ; and yet both of them took their rise from the system of slavery ; the former, from the unwarrantable claiming children of Indian parentage, and the latter, because the slave had rather reside among savages than to receive what has been called the Christian treatment of the white man. And have we any assurances our

country will not be constantly kept in broils of a similar description, and have we no right to prevent them by removing the cause? The doctrine here put forth by the court would, we think, justify it.

In the case of Cohens *vs.* the State of Virginia, they speak of the power of the court, and the powers of the United States, on this wise:

"The use intended to be made of this exposition of the first part of the section, defining the extent of the judicial power, is not clearly understood. If the intention be merely to distinguish cases arising under the Constitution from those arising under a law, for the sake of precision in the application of this argument, these propositions will not be controverted. If it be to maintain a case arising under the Constitution, or a law, we think the construction too narrow. A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise under the Constitution, or a law of the United States, whenever its correct decision depends on the construction of either. Congress seems to have intended to give its own construction to this part of the Constitution in the twenty-fifth section of the judiciary act; and we perceive no reason to depart from that construction.

"The jurisdiction of the court, then, being extended by the letter of the Constitution to all cases arising under it, or under the laws of the United States, it follows that those who would withdraw any case of this description from that jurisdiction must sustain the exemption they claim on the spirit and true meaning of the Constitution, which spirit and true meaning must be so apparent as to overrule the words which its framers have employed."

"The American States, as well as the American

people, have believed a closer and firmer union to be essential to their liberty and to their happiness. They have been taught by experience that this union cannot exist without a government for the whole, and they have been taught by the same experience that this government would be a mere shadow that must disappoint all their hopes, unless invested with large portions of that sovereignty which belongs to independent States. Under the influence of this opinion, and thus instructed by experience, the American people, in the convention of their respective States, adopted the present Constitution.

"If it could be doubted whether from its nature it were not supreme in all cases where it is empowered to act, that doubt would be removed by the declaration that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby; any thing in the Constitution or laws of any State to the contrary notwithstanding.

"This is the authoritative language of the American people, and, if the gentleman please, of the American States. It marks, with lines too strong to be mistaken, the characteristic distinction between the government of the Union and those of the States. The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the Constitution; and if there be any who deny its necessity, none can deny its authority.

"To this supreme government ample powers are confided; and if it were possible to doubt the great purposes for which they were so confided, the *people* of the *United States* have declared that they are given 'in order to

form a more perfect union, establish justice, insure the domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of *liberty* to themselves and their *posterity*.'

"With the ample powers confided to this supreme government, *for these interesting purposes*, are connected many express and important limitations on the sovereignty of the States, which are made for the same purposes. The powers of the Union, on the great subjects of war, peace, and commerce, and on many others, are in themselves limitations of the sovereignty of the States; but, in addition to these, the sovereignty of the States is surrendered, in many instances, when the surrender can only operate for the *benefit* of the *people*, and when, perhaps, no other power is conferred on congress than a conservative power to maintain the principles established in the Constitution. *The maintenance of these principles in their purity, is certainly among the great duties of the government. One of the instruments by which this duty may be peaceably performed is the judicial department. It is authorized to decide all cases, of every description, arising under the Constitution or laws of the United States.* From this general grant of jurisdiction no exception is made to those *cases* in which a *State may be a party*. When we consider the situation of the government, of the Union, and of the States, in relation to each other, the nature of our Constitution, the subordination of the State governments to that Constitution, the great purpose for which jurisdiction over all cases arising under the Constitution and laws of the United States is confided to the judicial department, are we at liberty to insert in this general grant an exception of those cases in which a State may be a party? Will the spirit of the Constitution justify this attempt to control its words? We think it will not. We think a

case arising under the Constitution or laws of the United States is cognizable in the courts of the Union, *whoever may be the parties to that case.*

"Had any doubt existed with respect to the just construction of this part of the section, that doubt would have been removed by the enumeration of those cases to which the jurisdiction of the federal courts are extended in consequence of the character of the parties. In that enumeration we find 'controversies between two or more States, between a State and citizens of another State, between a State and citizens thereof, and between a State and foreign states, citizens or subjects.'

"One of the express objects for which the judicial department was established, is the decision of controversies between States, and between *a State and individuals.* The mere circumstance *that a State is a party, gives jurisdiction to the court.* How, then, can it be contended that the very same instrument, in the very same section, should be so construed as that this same circumstance should withdraw a case from the jurisdiction of the court, when the Constitution or laws of the United States are supposed to have been violated? The Constitution gave to every *person* having a claim upon *a State a right to submit his case to the court of the nation. However unimportant his claim might be, however little the community might be interested in its decisions, the framers of our Constitution thought it necessary, for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided.* Can it be imagined that the same persons considered a case involving the Constitution of our country and the majesty of the laws, questions in which every American citizen must be deeply interested, as withdrawn from this tribunal because a State is a party?"[1]

[1] Marshall on the Constitution, pp. 224—7.

After stating he considered that, as a "political axiom, the "judicial power of every well-regulated government must be coextensive with the legislature, and must be capable of deciding every judicial question which grows out of the Constitution and laws," he says, —

"There is certainly nothing in the circumstances under which our Constitution was formed, nothing in the history of the times, which would justify the opinion that the confidence reposed in the States was so implicit as to leave in them and their tribunals the power of resisting or defeating, in the form of law, the legitimate measures of the Union. The requisitions of congress under the Confederation, were as constitutionally obligatory as the laws enacted by the present congress. That they were as universally disregarded is a fact of universal notoriety."[1]

And, again, —

"If jurisdiction depended entirely on the character of the parties, and was not given when the parties have an original right to come into court, that part of the second section of the third article which extends the judicial power to all cases arising under the Constitution and laws of the United States would be mere surplusage. It is to give jurisdiction when the character of the parties would not give it, that this very important part of the clause was inserted. It may be true, that the partiality of the State tribunals, in ordinary controversies between a State and its citizens, was not apprehended, and therefore the judicial power of the Union was not extended to such cases; but this was not the sole nor the greatest object for which this department was created. A more

[1] Marshall on the Constitution, p. 230.

important, a much more interesting object was the preservation of the Constitution and laws of the United States, so far as they can be preserved by judicial authority; and therefore the jurisdiction of the courts of the Union was expressly extended to all cases arising under that Constitution and those laws. If the Constitution or laws may be violated by proceedings instituted by a State against its *own citizens*, and if that violation be such as essentially to affect the Constitution and laws, such as to arrest the *progress of government* in its constitutional course, why should these cases be excepted from that provision which extends the judicial power of the Union to *all* cases arising under the Constitution and laws?

"After bestowing on this subject the most attentive consideration, the court can perceive no reason, founded on the character of the parties, for introducing the exception which the Constitution has not made; and we think the judicial power, as originally given, extends to all cases arising under the Constitution or a law of the United States, *whoever may be the parties.*"[1]

Speaking of the eleventh amendment, which is in these words, — "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state, — he says, —

"It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts formed a very serious objection to that

[1] Marshall on the Constitution, p. 233.

instrument. Suits were instituted, and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehension that was so extensively entertained, this amendment was proposed in congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign state: the jurisdiction of the court still extends to these cases, and in these a State may still be sued. We must ascribe the amendment to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one that might be commenced before the adoption of the amendment, were persons who might probably be *creditors*. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States.

"The first impression made on the mind by this amendment is, that it was intended for those cases, and those only, in which some demand against a State is made by an individual in the courts of the Union. If we consider the causes to which it is to be traced, we are conducted to the same conclusion. A general interest might well be felt in leaving to a State the full power of consulting its convenience in the adjustment of its debts, or of other claims upon it; but no interest

could be felt in so changing the relations between the whole and its parts as to strip the government of the means of protecting, by the instrumentality of its courts, the *Constitution and laws from active violence.*

"The words of the amendment appear to the court to justify and require this construction. The judicial power is not 'to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State,'" &c.[1]

He then goes on and explains what a suit is, that it is "some claim, demand, or request," and gives Judge Blackstone's definition of the "remedy for every species of wrong," which is "the being put in possession of that right whereof the party injured is deprived;" and "the instrument whereby the remedy is obtained is a diversity of suits and actions."

"Suits had been commenced in the Supreme Court against some of the States before this amendment was introduced into congress; and others might be commenced before it should be adopted by the State legislatures, and might be depending at the time of its adoption. The object of the amendment was not only to prevent the commencement of future suits, but to arrest the prosecution of those that might be commenced when this article should form a part of this Constitution. It therefore embraces both objects; and its meaning is, that the judicial power shall not be construed to extend to any suit which may be commenced, or which, if already commenced, may be prosecuted against a State by the citizens of another State. *If a suit, brought into one court, and carried by a legal process to a supervising*

[1] Marshall on the Constitution, p. 244.

court, be a continuation of the same suit, then this suit is not commenced or prosecuted against a State. It is clearly, in its commencement, a suit of a State against an INDIVIDUAL; which suit is transferred to this court, not for the purpose of *asserting any claim against a State, but for the purpose of asserting a constitutional defence against a claim made by a State.*"[1]

Now if any one of the States, or even the United States, should make a law taking away the rights of any individual, especially his inalienable rights, for no crime, the State, or the United States, by so doing, claiming a right of control which is not justifiable by our Constitution, this claim, if we understand this language, would be annulled by the courts, if a case should be brought, either by appeal from the lower courts, or by a suit brought immediately before the Supreme Court.

From the language here held by Mr. Marshall, we should suspect it was on this amendment of the Constitution Mr. Webster based his opinion, asked him by Messrs. Baring & Brothers, respecting the power of sueing one of the States of the Union for any claim for money loaned a State. His opinion was, they had no power to sue a State for money loaned. For it will be perceived, by this amendment, and the reasons Mr. Marshall gives why it was adopted, that there is now no court in the country which has the power to entertain such a suit.

After stating many objects for which the people

[1] Marshall on the Constitution, p. 246.

of the United States are to be considered one people, he says, —

"The people have declared that, in the exercise of all powers given for these objects, 'the government' is supreme. It can, then, in effecting these objects, legitimately *control all individuals or governments* within the American territory. The Constitution or laws of a State, so far as they are *repugnant* to the Constitution and laws of the United States, are absolutely *void*. These States are constituent parts of the United States; they are members of one great empire; for some purposes sovereign, for some purposes subordinate." [1]

He concludes his opinion on this case in these words:

"After having bestowed on this question the most deliberate consideration of which we are capable, the court is *unanimously* of opinion that the objections to its jurisdiction are not sustained, and that the motion ought to be overruled." [2]

The case from which the foregoing quotations are taken was one where judgment had been given against the firm of P. J. & M. J. Cohens, for selling lottery tickets, and an appeal to the higher courts of Virginia was refused. The court expressed no opinion on the merits of the case, as it touched no constitutional point, and we know not their opinion was asked; but they reversed the opinion of the lower court, and also affirmed their own jurisdiction in the case; that is, if we understand it, they had the right to take cognizance of the rights of the individual if they were infringed

[1] Marshall on the Constitution, p. 250. [2] *Idem*, p. 261.

upon by a State, or its courts; and they therefore gave the persons in this case what they asked,—a hearing before the higher courts of Virginia, though the lower courts of that State had refused to grant them their consent so to do. The rights of the individual they considered in their keeping.

In these quotations we think the power of the courts is clearly sustained, if a case of a slave could be brought before them, when that slave is held either without or by any law of any one of the States; and that the objects for which the Constitution was formed was for far other purposes than for the continuance of slavery. They say one of the express objects for which the judiciary department was established, is the decision of controversies between States, and between a State and individuals. "The mere circumstance that a State is a party gives jurisdiction to the court." Again, "*The Constitution gave to every person having a claim upon a State a right to submit his case to the court of the nation.*" The court, in effect, have here said their jurisdiction, unless in case of crime, extends to the individual, whenever his rights or the liberty of his person is at stake. Will they now say the color of the skin determines their jurisdiction? or, because a person is born under peculiar circumstances, they, in consequence, have no right to be heard before them, or no rights as individuals? We think it would be hard for judges so to decide; but, on the contrary, if the Constitution was adopted by our fathers "to secure justice, the blessings of liberty to themselves and their

posterity," as the court here says it was, then we say, that — as our Declaration of Independence declares all men have an inalienable right to their life, liberty, and pursuit of happiness, and that to secure these rights our revolution was brought about, and the Constitution was adopted to carry out this truth, and every State has agreed to this Constitution, then, if they keep within this Union, and they violate the doctrines here advanced, and take away the liberty of an individual, or suffer it to be taken away by any of its citizens — the court, if appealed to, has a right, and it is its bounden duty, to restore the citizen or person to that freedom which is by nature his birthright, and which the Constitution of the country says shall not be unduly taken away; for it declares, "The right of the *people* to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," "nor be deprived of life, liberty, or property, without due process of law," &c. &c. and that it would be in violation of the liberty of themselves or their children, if their rights were not secure. We see not how these arguments can be disposed of, or how it can be otherwise supposed than that slavery, or the restraining men in slavery, is in direct violation of the Constitution, unless it is maintained the colored man does not belong to the human species; but we presume no one will maintain this doctrine.

The court says, in speaking of the confidence reposed in the different States, — and the language

is remarkable, considering how much need there was to be guarded on the subject, and how far the States had continued in their departure from the grand idea of the object of making this land the land of the free, as slavery has been affirmed to be a blessing instead of a curse, — that there was little or no confidence to be placed in the States; that they had "habitually disregarded constitutional requisitions made by the old congress;" and therefore it was not "improbable" that congress should give the court the power of construing the Constitution "in the last resort;" consequently nothing has been left in confidence to any one of the States; the rights of each have been, so far as possible, clearly and explicitly defined.

But it was objected to the jurisdiction of the court, in cases between a State and one of its citizens, on the ground that a State would not wrong one of its own citizens, but that it might wrong an alien, or a citizen of another State. This is answered in the quotation from page 233, and we think it also has been answered in the events which are constantly occurring in slaveholding States. The States, it is well known, pay no sort of attention to the rights of those who are considered slaves, whether they are white or black: to all intents and purposes they are put without the pale of protection; and, if the Supreme Court have jurisdiction where individual rights are concerned, "*whoever may be the parties*," if those rights arise under the Constitution, we cannot see who have greater reasons for being pro-

tected by this court than those whose every right has been taken away from them, not only by laws of the States, but by force and fraud of individuals.

In the quotation from page 244, the court speaks of the cause that gave rise to the eleventh amendment of the Constitution. It cannot but be perceived, as we have before remarked, that this amendment clashes, in some measure, with the article in the body of the Constitution on the powers of the judiciary. Why such an amendment was made, it would have been difficult to have explained, unless one was well acquainted with our history.

On first reading this amendment over, and comparing it with the original article, we did not know what to make of it. There evidently was something meant that was not explained on the face of the instrument; but what that something was, we could not conjecture. We did not know but it was intended to meet the very case under consideration, — to prevent any person out of the slave States from bringing an action, where slavery would be involved; and although a case could be got into court, yet this amendment, it was thought, would stand in the way; but the court, it appears, gives a different version to the subject, and says it was intended merely to prevent foreigners and people out of the State from sueing their demands when a State was a creditor.

It is also to be remarked, in these quotations, how distinctly the court refers to the caption of the Constitution to ascertain the purposes for

which the Constitution was formed, and that from this its intent and meaning were to be gathered. How far and how foreign from expressing the least idea, that the establishment of slavery was one of its objects, we need not attempt to explain. No person could think such a thing existed, or could exist, among a people whose representatives could write such language. In this case, we think, according to the opinion here expressed by the court, our proposition respecting the power of the courts is clearly established; and that they would have power and jurisdiction over the subject of slavery; and, if a case should be brought before them, they would be obliged to take cognizance of it, and declare the man to be free.

In the case of Gibbens vs. Ogden, a case in which the State of New York had granted to R. R. Livingston and Robert Fulton exclusive privilege to navigate the waters of that State by steamboats, Ogden, deriving his right from them, obtained an injunction against Gibbens, who had established two steamboats on these waters. Gibbens, having been defeated in the highest court of the State, brought his cause before the United States Court, which court, as is well known, reversed the decisions of the courts of the State of New York.

Speaking of the objects of the Constitution, and the powers granted by it, the court says, —

"As preliminary to the very able discussion of the Constitution which we have heard from the bar, and as having some influence on its construction, reference has

been made to the political situation of these States anterior to its formation. It has been said that they were sovereign, were completely independent, and were connected with each other only by a league. This is true. But, when these allied sovereigns converted their league into a government, when they converted their congress of ambassadors, deputed to deliberate on their common concerns and to recommend measures of general utility, into a legislature, empowered to enact laws upon the *most interesting* subjects, the whole character in which the States appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected.

"This instrument contains an enumeration of powers expressly granted by the people to their government. It has been said these powers ought to be construed strictly. But why ought they to be so construed? Is there one sentence in the Constitution which gives countenance to this rule? In the last of the enumerated powers, that which grants expressly the means of carrying all others into execution, congress is authorized 'to make all laws which shall be necessary and proper' for the purpose. But this limitation on the means which may be used is not extended to the powers which are conferred, nor is there one sentence in the Constitution which has been pointed out by the gentlemen of the bar, or which we have been able to discover, that prescribes this rule. We do not, therefore, think ourselves justified in adopting it. What do gentlemen mean by a strict construction? If they contend only against that enlarged construction which would *extend words* beyond their *natural* and *obvious* import, we might question the application of the term, but should not controvert the principle. If they contend for that narrow construction which, in support of some theory not to be found in the Constitu-

tion, would deny to the government those powers which the words of the grant, as usually understood, import, and which are consistent with the general views and objects of the instrument, for that narrow construction which would cripple the government, and render it unequal to the objects for which it is declared to be instituted, and to which the powers given, as fairly understood, render it competent, then we cannot perceive the propriety of this strict construction, nor adopt it as the rule by which the Constitution is to be expounded. *As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who formed our Constitution, and the people who adopted it, must be understood to employ words in their natural sense, and to have intended what they have said.* If, from the imperfection of human language, there should be serious doubts respecting the extent of any given power, it is a well settled rule that the objects for which it was given, especially when those objects are expressed in the instrument itself, should have great influence in the construction. We know of no reason for excluding this rule in the present case."[1]

Here the court admits, what every one in his sober senses must admit, that the men of that age meant what they said, and employed "words which most directly and aptly expressed the ideas they intended to convey;" that they "employed words in their natural sense." We hope this will always be borne in mind when it is attempted to construe their words, when they speak of human rights; and, if it is done, we think there will be no

[1] Marshall on the Constitution, p. 288.

difficulty in the way. When they say a man has inalienable rights, they mean he has them; and when they say a man may be given up when he owes service, they mean, when it is proved that service is owed, it is time to give the creditor his due; and we hold the amount of service due should be proved, as well as that it is for value received.

This, however, may be called a strict construction; too strict for the intent and meaning of those who adopted it as a part of the Constitution. If such would be maintained, we would then appeal to the spirit of the Constitution, and to the objects for which it was formed: these objects, as the court has said, are to be found in the caption. Now, taking this in as strict or in as enlarged view as possible, not the least shadow or "color" of an idea could be gathered from that, that the continuation of slavery, or its guaranty, was to be effected by it; on the contrary, the general happiness, prosperity, and liberty, was the purpose to be gained. But, again, it may be objected, that the liberty, happiness, and prosperity of the individual was left and confided to the States; the general government had nothing to do with him: but the doctrine of the court, and the decision made in this case, give a different version to that subject. They here in effect declare, and undoubtedly with truth, that, on the adoption of the Constitution, the States resigned the protection of the individual to the care of the general government: they gave up their sovereignty of him to a power which they

thought would be better able to preserve his liberty and shield him from danger than they, either in their divided or confederated capacity, could do. Before the adoption of the Constitution, the individual looked to the State to guard his individual rights; since the adoption of that instrument, the individual, as in the case cited, looks to the general government, when the State fails to afford him that protection. He first looks to the State, and, if he finds they cannot, or will not, afford him protection, he then appeals to the courts of the country, and the State courts must bow to their decision. If, however, they will not so do, the Supreme Court has the power to call on all the military force of the country to put their mandate into execution. If it is not so, for what purpose does the individual owe any allegiance to the general government? for what purpose does he sustain it? Is it that he may have the pleasure of having a president, and a congress of the United States, and, in the course of time, that he may run his chance of being one of the distinguished men to fill these stations, and thereby gain a name? Is it, as Patrick Henry suggested, that we might be a great nation, and be able to make a figure in the world? and, even if it is so, wherein do we show our power? Is it not in the ability we possess of protecting the individual not only from foreign, but from domestic foes? Wherefore are our ships of war sent upon every ocean, and in every sea, but that the rights of the individual, let him be in what sea or ocean he may,

should be protected? Wherefore are our ambassadors and consuls despatched to every country on the globe? Is it not that each and all of our citizens, if they have taken up a residence there for business, or have gone on a visit to those countries, should be protected in their lawful undertakings, and be preserved from the despotic power of others? We hold it so. The government, as a government, wants no protection there; neither do the States, as States. We do not send either our sailors or ambassadors abroad for conquest. The whole object of all our naval forces that are now cruising in foreign seas, is to protect the various individuals of our country who may have wandered there, either in quest of business, pleasure, or science. This, perhaps, may be granted, so far as relates to the white man, to the Anglo-Saxon, or even to the descendants of the German, French, or Spaniard, Greek or Hindoo, but not to the descendants of Africa; of these we take no account; they are not to be considered as persons coming within the meaning of the Constitution; they are nonentities. But is this so? In what part of the Constitution is there any exception made to the African race? Where does it say this principle applies to one people, and that principle to another? Where does it say justice may be meted to one class of persons, and the most horrid injustice to the other? Where, in that instrument, is there any distinction made on account of the color of the skin, and, on account of that color, must the decision of the judge be

made? No such distinction can be pointed out, and, as we have seen by the amendments to the Constitution, none was meant to be pointed out. By the word "person" was meant all individuals, of whatever clime, nation, or sex, whose home was within the borders of the United States. The shield of protection was to be thrown over all. Hence, we think the Hon. John Q. Adams has been at fault in saying he should not vote for the abolition of slavery in the District of Columbia, unless there was a majority of that District in favor of its abolition, not counting those among the colored population who would have been in favor of it. This population he has entirely overlooked; he has counted them as naught, as persons who were not to be consulted, as those who had no interest in the matter. Has he not done wrong in so doing? We shall leave him to answer for himself.

In the case of Calder and wife vs. Bull and wife, speaking of the object and aim of men in entering into the social state, and the powers of the legislatures to enact laws for the government of society, the court speaks with great plainness; and, if their doctrines were carried into force, it would be impossible for one man to hold another in bondage. They show that it is not in the power of the legislature, "in our free republican governments," "to *authorize manifest injustice by positive law*, or to *take away that security for personal liberty, or private property*, for the protection whereof government was established." Language

cannot be plainer; and, if the present court hold to the same doctrines, we have but to bring the case of a slave before its tribunal, and the obnoxious, the abhorrent system at once tumbles to the ground. Like the baseless fabric of a dream, it has no support. On opening the eyes, the vision is gone, the whip and the chains vanish, and man, the slave, stands erect before his fellow-men and his Maker, in all the conscious dignity of freedom, subject only to the rule of right, and to that moral responsibility to which God subjects all his rational creatures.

We think nothing can be more to our purpose than the expressions here made by the court, and they prove what we have in these pages designed to prove. They restore man to his rights, by the rules of our government, however much either individuals or States may have endeavored to overthrow them. The court says, —

"The nature and end of legislative power will limit the exercise of it. This *fundamental* principle flows from the very nature of our free, republican governments,—*that no man shall be compelled to do what the laws do not require, nor refrain from acts which the laws permit.* There are acts which the federal or State legislatures cannot do without exceeding their authority. *There are certain vital principles in our free republican governments*, which will determine and overrule an apparent and flagrant abuse of legislative power: as, to *authorize manifest injustice by positive law;* or to take away that *security for personal liberty or private property, for the protection whereof the government was established.* An act of the legislature, —*for I cannot call*

it a law, — contrary to the great first principles of the social compact, cannot be considered a rightful exercise of the legislative authority. The obligation of law, in governments established on express compact and on republican principles, must be determined by the nature of the power on which it is founded. A few instances will suffice to explain what I mean: *a law that punishes a citizen for an innocent action, or, in other words, for an act which, when done, was in violation of no existing law;* a law that destroys or impairs the lawful private contracts of citizens; A LAW THAT MAKES A MAN A JUDGE IN HIS OWN CAUSE; or a law that takes property from A, and gives it to B. It is against all *reason and justice* for a people to entrust a legislature with such powers; AND THEREFORE IT CANNOT BE PRESUMED THEY HAVE DONE IT. *The genius, the nature, and the spirit, of our State governments amount to a prohibition of such acts of legislation, and the general principles of law forbid them.*

"The legislature may enjoin, permit, forbid, and punish; they may declare new crimes, and establish rules of conduct for *all* its citizens in future cases; they may commend what is right, and prohibit what is wrong; but they cannot *change innocence into guilt*, or *punish innocence as a crime;* or violate the right of an antecedent, *lawful*, private contract, or the right of private property. To maintain our federal or State legislatures possesses such powers, *if they had not been expressly restrained, would, in my opinion, be a political heresy, altogether inadmissible in our free, republican governments.*"[1]

It might here be asked, could Judge Chase use the above language without having in his mind the situation of the colored man? Must he not,

[1] Marshall on the Constitution, p. 507.

at the time he delivered this opinion, have been aware of its bearing on the case of a slave? We can hardly conceive it possible it should be otherwise; and yet it may be: we have no proof he had, or that his thoughts were otherwise occupied than with the case before him. But the doctrines are broad and comprehensive, and yet simple. It is but saying a legislature, at least one of the legislatures, of this Union, may legislate for the good and welfare of the individuals of the State; but they cannot pass laws, either of an immoral character, and professedly to the injury of any of its citizens, or make a man a judge in his own cause; —and what is a slaveholder but a judge in his own cause? These, he says, are altogether contrary to the genius of our government. Can we ask anything more?

CHAPTER XVI.

CONCLUSION.

We have now ended our quotations to prove the doctrine we have advanced, — that the Constitution does not nor cannot guarantee slavery; and, so far as public documents show — and these are the ones on which alone we should rely to elucidate the subject — we cannot but come to the conclusion they all prove there could have been no compact, there was no general understanding, it should be continued; but, on the contrary, from all the authority we can glean from the history of the times, the whole system was, for the most part, execrated as a foul blot on the history of man; that it was the main design of our fathers, in coming to this country, to establish a community where impartial laws should be administered, where every person should enjoy his individual rights unmolested by others; that, after many hardships and trials, and many attempts made to overcome their love of freedom, they did succeed in overthrowing a foreign attempt to enslave them, and then established, as they thought and intended, a government in a great measure agreeably to their wishes, when they thought, if every one did not then, they soon would, enjoy

that liberty for which they had so long panted, and left upon record an instrument, though defective in some points, yet, if its doctrines should be carried out, would produce the revolution so much desired; that it is only by departing from these instructions we find ourselves embarrassed by such conflicting interest; and that a return to those few fundamental principles of right and good government will alone make us a happy and prosperous people; that it was wicked men, who from the first attempted to establish this system against the remonstrances of the good; and that, by their persevering endeavors, joined, perhaps, with the honest fear of some, they came near preventing a union of the States; and, if not now checked in their mad career, they will make this land a land of darkness and of the shadow of death, a land where no goodness dwells, where crime, bloodshed, and all iniquity may prevail, where the brute takes possession of the man, and a state of society as much worse than that which existed before its present inhabitants took possession of the soil as can be well conceived, and which is fitting and preparing for it an early destruction, instead of making it, as it might be made, a paradise on earth, where the bounties of Providence are so luxuriantly produced, that we have but to sow, and the seed puts forth her fruit.

Is it, then, too late to bring back the thoughts from their erratic wanderings? to do away the attempt to make lords and masters, and, per consequence, to degrade a portion of our fellow-men

to the level with the brute, or make him subservient only to pamper our lusts and passions? We trust that it is not so; we trust there is yet virtue enough in the land to save it from a degradation so low and so contrary to the aspirations of those who have preceded us. Is it too late to appeal to the right reason of our southern friends, and urge them to stop, and either let the general government take the matter in hand, and do, as we think we have proved they have the power of doing, whatever they may think best in extirpating the system, it being an evil of so great magnitude, or else let the courts decide, and say that every individual who whips or maltreats another, be that other called either bond or free, is liable to be prosecuted for an assault and battery, and, if any one restrains another against his consent, his freedom may be obtained by a writ of *habeas corpus?* For we think we have proved the propositions we proposed, to wit:

1. That, whatever may have been the inducement which caused the Constitution of this country to be formed, — whether it was, as Mr. Ames stated in a speech delivered in the congress of 1789, that it had "been often justly remarked, that the Constitution under which we deliberate originated in commercial necessity," or whatever else may have been the cause with some, — the people determined that their individual rights should not be invaded, and that no constitution should be formed that put the liberty of the individual in danger. In fact, they took for granted

the principles of the Declaration of Independence; but the necessities of the country were such, both with regard to its internal and external wants, it was thought necessary to form a more perfect union, the better to secure the rights and liberties of each and all. In order to effect these objects, it was found necessary for the States to surrender, in the last resort, the liberty of the individual to the care of the general government, that, when the States could not or would not protect him, then the general government, with its ample abilities and powers, could step in and do it; and that, while this general government was empowered to secure the general welfare, it was prevented, not only in the body of the Constitution, but more particularly in the amendments, from interfering with certain rights; believing, as we suppose they must have believed, it would never be for the general welfare that the particular rights enumerated, with others not so, should be encroached upon; and, whatever compromises there may have been on other subjects, no compromise was made involving the liberty of the individual.

2. That the subject of slavery was fully commented upon, and the Constitution was formed with the full understanding of its nature, and the people of that day did not and would not, in any shape, give their sanction to the system; but, owing to the strong opposition made by South Carolina and Georgia, and by their earnest solicitations, congress consented that, for twenty years, they would not put a stop to the introduction of any one whom

the States might think fit to introduce; or, if you will, they would not put a stop to the slave-trade, though they would not pollute the parchment on which it was written by writing on it such a sentence: while all the other provisions of the Constitution might have gone into immediate action, such as liberty of speech, of the press; the peaceably assembling together of the people, to consult on any subject concerning their welfare, without excepting the colored man; the petitioning of congress; the right to be secure in their persons, houses, papers, and effects; nor be held to answer for any capital or other infamous crime, without first presentment of a grand jury; nor be excessively fined, nor have any cruel or unusual punishment inflicted; nor be deprived of life, liberty, or property, without due process of law, &c.: so that, if the colored population, in their individual capacity, had sought redress for their individual grievances, they could have obtained them, if the courts had done their duty from that time to the present. But, if the combination against the rights of any individual or individuals should, at any time, become of such magnitude as to require the interposition of congress, then, —

3. Congress had power conferred on them by the people to restore those rights, not only in the preamble to the Constitution, but in the amendments, where many of our inalienable rights are specially enumerated; the preamble being the only authentic account we have, stating for what purposes the Constitution was formed; and the

different articles and sections show how these particular and special purposes are to be carried into effect; and if any individual or any of the States should make use of any thing in these articles or sections to allow practices inconsistent with the object and intent for which the union was said to be expressly designed; or should, in violation of any of them, infringe on these rights, to prevent, if possible, a physical interference by the government, then, —

4. The United States Court was established for the purpose of deciding, in all cases that might be brought before it, when the rights and liberties of the State, or the inalienable rights of the individual of the States, might be called in question. That they were to be the tribunal in the last resort, and their decisions were to be backed by all the civil and military power of the country, if their decisions were not conformed to in a peaceable manner; and the result was, and is, that each and every individual in the country could, and can, look to the general government of the United States for the preservation of his inalienable rights, instead of, as he had done under the Confederation, to the State governments; and that this constitutes the distinctive character between the Union and the Confederacy, — the States, as was alledged, being incompetent, or unwilling, in their confederate capacity, to shield the individual in the different States either from external or internal foes. Shays's rebellion in Massachusetts, the whisky rebellion in Pennsylvania, the non-com-

pliance with the requisitions of congress by different States, the dangers that might arise from insurrections of the slaves, the rapacity of foreign governments, and the ambition that might actuate individuals, were brought forward as evidences.

The government would not permit a general insurrection, either of slaves or any other people, when they had provided for securing the rights of every individual by civil processes. But if these civil processes should ever become so corrupt that the people could not obtain their rights, or if they should ever be so perverted as to give unjust judgments, their own practices and their Declaration of Independence acknowledged the right of revolution.

Here, then, we think, is the true theory of our government. It was "established and ordained by the people" for good and beneficial purposes, not for evil or ambitious ones; to defend themselves from the evil designs of foreign governments, from the pretensions of any one or more of the States, or any individual of any of the States, and to quell any popular insurrection the State governments could not quell, or asked assistance to quell; but, in order to effect these purposes, they could not interfere at all with certain rights, and no natural right, but by due course of law; so that every individual of the land has the power to call on the civil government in the first place to protect him in his lawful undertakings, and he may exercise the liberty of speech and of the press to main-

tain himself in these rights; and, if the courts of the civil government cannot protect him, then he may, through the courts, call upon all the physical power of the country so to do, whether that individual be white or black, bond or free. And we suspect much of the excitement we have of late heard about State rights arises from the idea whether each individual shall, in the last resort, or ultimately, look to the State in which he resides, or to the general government, for protection.

The Southern States, or rather individuals of the Southern States, not wishing that the liberty of every individual should be secured, and wanting to found their governments on rapine, and not for the good or the whole, have been anxious for State rights, that a certain class might act as they pleased, independently of the rights of certain others. That is, they wish to hold slaves by law, and they now know no law can support them in it; for we find neither a Hayne, nor a McDuffie, nor a Preston, nor a Calhoun, nor a Clay, have ever dared to enter on a discussion of the right of the southern people, under the Constitution, to hold slaves, or the constitutionality of the thing. They never have presumed to state wherein any compact lies, or to enter into an argument on the subject; *they* have left this for clergymen to do; but, when they are pressed, they apply the gag; "hanging without benefit of clergy" are the premises, and the conclusion of all their reasoning, if reasoning they have ever given. Is it not so?

If the purposes of the Constitution, as expressed

in the preamble, can be faithfully carried out, we would go for it, as it is. So far as human governments are concerned, we know of none established on better principles. We are not anxious for a change, saving where any doubt exists, as to the intent and meaning of the phraseology of the Constitution: that phraseology might be altered, if it would have any tendeney better to secure the rights of the individual.

But after all we have said, it may be argued that the Magna Charta of England, although it says "to no man will we [the government] sell, deny, or delay justice and right," "yet it never freed a slave;" and they would argue from this our Constitution would or should not. But it may be asked, did ever a slave, as a slave, ask of the governments, through the courts, to relieve him from his bonds? we suspect not often. Those who have administered the law have been very careful never to let a slave's voice be heard in a court of justice; or, if it has been heard, as in Massachusetts, and in the case of Sommersett in England, freedom has been given. The magistrates, in some of our States, who have delivered up runaway slaves, have, we suspect, done it without due regard to the inherent right of him who has been claimed, and without inquiring, as in the words of the Constitution, whether the service or labor was due.

But, if a slave should go into a lawyer's office in any of our Southern States, and make the inquiry whether his master, under our Constitution, held any constitutional right over him, would the

lawyer venture to give him any legal advice? or would he not rather direct him to the door, and let the poor fellow ascertain his rights as best he could? Without doubt, the latter *service* would be rendered much oftener than the former.

If, then, our conceptions are right of the nature of our Constitution, we would ask, with all due seriousness, are we going to change it? Are we going to precipitate our country into a worse than a savage state? Is it wanted to bring upon this land the darkness of heathenism to produce a state of society as degraded as that of the most benighted nation on earth; and, as a consequence, prevent the anticipations of the great and good men, who desired to restore man to his long lost rights, from being ever realized? Must the blood and treasure that has been so profusely expended have gone for naught? Is there no way to prevent such a catastrophe? Must it be this continent is to be turned into a great piggery, a great sty, for the purpose of raising man, immortal man, to be sold as the brute, to be yoked and fettered, and driven about like the ox or the swine? and though not yet consumed like them, yet is there any certainty we shall not so find it? If we can already suppose he can take the place of the lower animals in so many ways, may he not in all? There are cannibals in the world; and is there any surety, if we depart from the principle of the immortality of man, and herd him with the brute, we shall consider him any thing more than a brute, and treat him as such? Is it, we say, for such

purposes this continent was given to the Anglo-Saxon race, that the wild man of the woods driven out before him, that he might take his place to exercise such a foul dominion? Can it be God designed such a consummation? Can it be he permitted those who worshipped him, though ignorantly, and much superstition and barbarism were mingled with their devotions, but who roamed with freedom throughout this panorama of beauty, and sent forth their orisons in praise of him who created it, to be driven out to give place to a race who would treat his image with contempt, and cause all knowledge of himself and his government to be lost, that man's brutish passions might be pampered, and that distress, and pain, and anguish, and heart burnings, and tears, and blood, should take the place of such devotions? God forbid! it cannot be. No! The system of slavery must be broken up! Our southern friends cannot look upon such a picture, and such a true picture, without quailing; they must shrink back from contemplating the horrid results of their course of action! they cannot continue to support a system which they must see is leading to inevitable destruction, so unworthy of men, so derogatory to right, so opposed to Christianity, to humanity, and the laws of God!

Under cover of all their opposition, we cannot but think there lurks a consciousness they are committing a wrong; and, if they have this consciousness, they will, sooner or later, exercise it. They will not be guilty of so outraging the pur-

poses of the Deity; they will not change this paradise into a hell, where every foul bird, and that that maketh a lie hovers and deceives! No, we will think better things of our neighbors, and trust, though we have at times had our faith shaken, that, since they have had their attention so thoroughly aroused by the thousand publications on the subject, they will repent, and restore their brother man to that dignity which our Constitution, nature, and God, hath designed him.

If, however, this is not to be the end, and our courts decide the descendants of Africa are to be thrown out of all government protection, that they are to be left to the mercy of irresponsible men to treat them as they list, or even to the tender mercies of a State, when that State can use the barbarity towards them that Alabama, Arkansas, and Missouri have done, in commanding all free colored people to leave their several States under heavy penalties, or making it impossible for them to be freed; better these United States be broken up at once; we see no object in their union! The purposes for which the union was designed is not the actuating one for which it is to be continued, and it should be so understood. In the original design, the liberty of all persons was to be secured; in the present, only a part; for if the descendants of the African race can now be made slaves without remorse, it cannot be long before the descendants of the Anglo-Saxon will be, if they are not already, under the same disabilities, with as little compunction of conscience, and the

fears of Patrick Henry will be more than realized. But, as we have remarked before, we do not believe this will be the case; and we trust we shall yet be able to say these United States will do what Mrs. Hannah More said England would, during the contest for destroying the legality of the slave-trade:

"Shall Britain, where the soul of freedom reigns,
Forge chains for others she herself disdains?
Forbid it, Heaven! O let the nations know
The liberty she tastes she will bestow;
Not to herself the glorious gift confined,
She spreads the blessing wide as human kind,
And, scorning narrow views of time and place,
Bids all be free in earth's extended space.
What page in human annals can record
A deed so bright as human rights restored?
O may that godlike deed, that shining page,
Redeem our fame and consecrate our age;
And let this glory mark our favored shore,
To curb false freedom, and the true restore!
And see the cherub MERCY, from above
Descending, softly quits the sphere of love!
On Britain's Isle she sheds her heavenly dew,
And breathes her spirit o'er the favored few;
From soul to soul the generous influence steals,
Till every breast the soft contagion feels.
She speeds exulting to the burning shore,
With the best message angels ever bore;
Hark! 't is the note that gave a Saviour's birth, —
Glory to God on high, and peace on earth!
As the mild spirit hovers o'er the coast,
A fresher hue the withered landscape boasts:
Her healing smiles the ruined scenes repair,
And blasted nature wears a joyous air,
Whilst she proclaims through all her spicy groves,
Henceforth your fruits, your labors, and your loves,
All that your sires possessed or you have sown,
Sacred from plunder, all is now your own."

APPENDIX.

A.

The following are the resolutions passed at the Green Dragon, alluded to on page 161 of this work:

"*Boston, January* 7, 1788.

"Agreeably to an advertisement inserted in the papers of this day, the tradesmen of this town met at Mason's Hall, Green Dragon, at 6 o'clock, P. M. when John Lucas, Esq. was chosen moderator; and, after some discussion, the moderator, Paul Revere, Esq. and Mr. Benjamin Russell, were chosen to draft certain resolutions expressive of the sense of this body. The committee, after having retired, returned, and reported the following, which, being read, was unanimously accepted, and voted to be printed in the several public papers, namely:

"*Whereas some persons, intending to injure the reputation of the tradesmen of this town, have asserted that they were unfriendly and adverse to the adoption of the Constitution of the United States of America, as proposed on the 17th of September last, by the convention of the United States assembled in Philadelphia,— therefore, to manifest the falsehood of such assertions, and to discover to the world our sentiments of the proposed frame of government,*

"Be it resolved,

"1. That such assertions are false and groundless,

and it is the sense of this body, that all those who propagate such reports have no other view than the injury of our reputation, or the attainment of their own wicked purposes, on base and false ground.

"2. That, in the judgment of this body, the proposed frame of government is well calculated to secure the liberties, protect the property, and guard the rights, of the citizens of America; and it is our warmest wish and prayer that the same should be adopted by the commonwealth.

"3. That it is our opinion, if said Constitution should be adopted by the United States of America, trade and navigation will revive and increase, employment and subsistence will be afforded to many of our townsmen who are now suffering from want of the necessaries of life; that it will promote industry and morality, render us respectable as a nation, and procure us all the blessings to which we are entitled from the natural wealth of our country, our freedom, and independence.

"4. That it is the sense of this body, that, if the proposed frame of government should be rejected, the small remains of commerce yet left us will be annihilated; the various trades and handicrafts dependent thereon must decay; our poor will be increased, and many of our worthy and skilful mechanics compelled to seek employment and subsistence in strange lands.

"5. That, in the late election of delegates to represent this town in convention, it was our design, and, in the opinion of this body, the design of every good man in town, to elect such men, and such only, as would exert their utmost ability to promote the adoption of the proposed frame of government in all its parts, without any conditions, pretended amendments, or alterations whatever; and that such, and such only, will truly represent the feelings, wishes, and desires, of their con-

stituents; and if any of the delegates of this town should oppose the adoption of said frame of government in gross, or under pretence of making amendments, or alterations, of any kind, or of annexing conditions to their acceptance, such delegate, or delegates, will act contrary to the best interests, the strongest feelings, and the warmest wishes, of the tradesmen of the town of Boston."

JOHN LUCAS, *per order.*

The above resolutions being passed, John Lucas, Esq. Mr. Joseph Clark, Paul Revere, Esq. Mr. Rhodes, Mr. Wm. Boardman, Joshua Witherell, Esq. and Capt. David Spear, were appointed a standing committee, to notify a meeting of the tradesmen of this town in future. After which the meeting was dissolved. On the 9th of January, the convention assembled in Boston to take into consideration the adoption of the Constitution.

B.

DECISION OF THE COURT OF ERROR AND APPEAL IN PENNSYLVANIA.

Before the Court of Error and Appeals, of Pennsylvania, composed of a judge specially appointed for that court, and the judges of the Supreme Court, and the presidents of the Court of Common Pleas, nine judges, of whom were present on the trial Benjamin Chew, the judge specially appointed, Edward Shippen, chief justice. Slave *vs.* Gras-

berry. Glentworth, the representative for Grasberry; Wm. Lewis, and Wm. Rawle, and Edward Tilman, for the plaintiff; Moses Levy, Joseph B. McKein, and Jasper Moylan, for the defendant.

In this trial the ground was taken by the plaintiff at a suit commenced by the Abolition Society of Pennsylvania, slavery did not exist in that State under the Constitution of the United States, and the Constitution of that State.

Judge Chew, in giving the opinion of the court, said it was their unanimous opinion that slavery did constitutionally exist in that State. My informer, Mr. Isaac T. Hopper, observed that the judge remarked he would not keep the public one moment in suspense, in letting them know such was the opinion of the court, but they would give the reasons for such a decision at some future time; which reasons, however, were never given. On the contrary, Judge Chew, who owned a plantation with slaves in Maryland, and consequently was at the time a holder of slaves, shortly after manumitted them; and, when asked, did not give any reasons for so doing.